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Official Report of Debates (Hansard)

Wednesday 29 January 1997

Journal des débats (Hansard)

Mercredi 29 janvier 1997

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 29 January 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 29 janvier 1997

The committee met at 1545 in room 151.

REFERENDA

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We are again meeting to discuss the issue of referendums and we are of course working on the report that we would expect to table in the Legislature when we complete.

Before committee members are three documents that the clerk has passed about, two letters that apparently were sent to the Premier, which have been referred to our committee, and also an appendix which would be attached to the Ontario Separate School Trustees' Association presentation which they made during the course of our public hearings.

Just to inform all committee members, we had a subcommittee meeting last week, I guess it was, and what we plan to do is go through the motion which is presently before us that has been moved by Mr Clement, rather informally discussing it point by point. We could only have, I guess, one vote at the very end of it, although I suppose we could have subvotes, Doug, on amendments perhaps, if that comes up?

Clerk Pro Tem (Mr Doug Arnott): Yes.

The Chair: Okay. Before we get started on that, though, M. Morin has indicated he would like to make a statement.

Mr Gilles E. Morin (Carleton East): Yes, I'd like to make a statement, Mr Chairman.

When we left off the last time this committee met, I think the Liberal caucus's position on provincial referenda was extremely clear. However, in case there is any lingering confusion about where we stand on this issue, allow me to reiterate our position at this time.

First, let me remind committee members that the Liberal caucus does not oppose referenda per se. We are very supportive of referenda and plebiscites initiated by democratically elected local governments. That is their right as enshrined in their governing legislation, as well as a long-standing tradition in this province and indeed across the country.

What the Liberal caucus is opposed to is this government's motion to introduce provincial referenda on issues that we feel are more appropriately handled without resorting to the expensive and possibly manipulative referenda process that allows the government to walk away from its responsibility for what it does.

All democratically elected governments across Canada must have the courage to confront and deal with difficult issues and to make tough decisions, even those that might be unpopular, such as raising taxes. The Liberal caucus

does not feel that it is appropriate for an elected government to avoid responsibility for tough decisions by handing them off to the general public. You were elected to be the government, and we believe that means taking responsibility for your own actions and not offloading them on to the general public.

We've stated before in this committee that the Liberal caucus would be willing to support provincial referenda on neutral, non-partisan issues of general importance to all Ontarians. The referendum would have to be agreed to and formulated by a committee composed of all three political parties. In other words, the only way that we believe this serious and potentially very important tool should be used is upon unanimous consent of all three political parties and on topics that are appropriate for referenda in Ontario, such as issues of national unity or other non-partisan issues.

We don't agree with what this government wants to do, which is to put various questions to referenda that will advance the government's own political agenda and that will allow it to walk away from responsibility for the consequences that result. We can't go along with that; we just simply can't.

There seems to be some confusion among some members of this committee. On the one hand, they are pushing forward this motion to enshrine provincial referenda on all kinds of topics of interest to this government. On the other hand, they are members of a provincial government that has stated quite clearly that it will go ahead with its plans to amalgamate all of the GTA into a megacity regardless of the results of a municipal referendum on the issue.

What is it to be? If you believe in referenda, pay attention to what the municipal voters in Metro have to say on the megacity. If you don't believe in referenda — and based on your stand on the megacity issue, you don't — then drop this motion. Your inconsistency on this issue can be seen as hypocritical and high-handed to the voters of Metro, who believe their concerns are being ignored by your government.

Finally, I have to say that the Liberal caucus is very concerned that Mr Clement's motion does nothing to protect the rights of Ontario minorities. We are a multi-cultural and diverse society, constantly changing, and this motion includes no safeguards from the hatred, intolerance or prejudice that can be stirred up by referenda on unpopular issues. For example, if this government put to the people of Ontario a referendum on the issue of bilingualism and funding French-language services, how would the rights of the francophone minority be protected? And there are many others: separate schools, for instance.

At the end of the day, the Liberal caucus will not be able to support a motion that would allow a democratically elected government to walk away from responsibility for tough decisions by offloading them on to the people who elected them.

May I add that of course it is our intention to submit our own report.

Mr Alvin Curling (Scarborough North): So be warned.

The Chair: We're technically in the midst of discussion, I suppose, on this motion, and I'll proceed by starting with point number 1: "Discretionary referenda may be initiated by the Legislature of Ontario." Is there any discussion on that point?

Mr Tony Clement (Brampton South): Thank you, Mr Chair, for the opportunity to lead off discussion on point number 1. I'm hoping to meet some of the concerns of Mr Morin as we proceed with the discussion of various other topics. I'm going to try to limit my remarks to some of the more poignant issues of this.

The essence of point number 1 is to acknowledge that the Legislature of Ontario may initiate referendums on issues within the purview of the Legislature of Ontario.

Let me say a couple of things in this regard. Firstly, in reviewing, as I have done several times now, some of the submissions this committee heard, I note a couple of things on this particular topic. Mr Harper, for instance, said referendums "should be permitted on a broad and unrestricted range of public policy issues," and so forth. A lot of submissions suggest that the issue should be broad.

There were also a lot of submissions — I'm looking particularly at Mr Boyer's submission and Mr Hogg's submission — that state that the theme of referendums initiated by the Legislature should be on issues of general importance to the public of Ontario. That is to say, it should not be an issue that is so restricted in its theme or on a public policy issue that is so restricted in terms of the general importance that it is held in by the public that it would be almost abusing the process of referendums.

All of that is to say I would hope it would go without saying that a government of the day would only use the tool of binding referendum on a very small list of issues, but it would be difficult to enshrine that prayer in a motion on what that list should be. Obviously, if the future were not the future, it would be the present. That is to say, it is difficult to predict what would be an important issue a year from now, let alone a couple of years from now or a decade from now. That is why I went with broader wording, to suggest that it would be whatever was in the purview of the Legislature of Ontario. I wanted it on the record that I would agree with the submissions of Mr Boyer, Mr Hogg and others who suggested that this tool should be used in important cases of important public policy.

The other thing I would say is that the referendum, as we have noted from the constitutional legal submissions that were before this committee, cannot bind the Lieutenant Governor of the province of Ontario. That leads me to conclude that referendums should not occur on issues that cannot be translated into a bill that the Legislature can debate and vote upon and then submit to the Lieutenant Governor.

It should not be, number one, an issue outside the purview or the jurisdiction of the Legislature, because obviously a bill that is outside the jurisdiction of the Legislature cannot in good conscience be debated by the Legislature, nor could it revolve around resolutions or other issues that cannot be presented in a bill.

I think the intention of this particular point is to focus referendums on issues that would be passed into law at some point. That is what a bill is for, and I wanted to make that point up front as well.

The third thing I would say is related to this. That is that because this section 1 is a rather permissive proposal, the issue of cost has come up on a number of occasions. I believe we are on the threshold of coming to an understanding — at least this is my hope — with the federal government to enact within Ontario, as throughout Canada, a permanent voters' list system. We heard from Mr Bailie that such a system, were it in place, would definitely reduce substantially the cost associated with referendums and indeed would cut the cost by many millions of dollars. That's my understanding. I'm quite hopeful that as the government and the government of Canada pursue a permanent voters' list, we will be in a position to meet the concerns of Mr Morin when it comes to issues of costs as well as issues of principle.

The Chair: Next on the list I have Mr Curling.

Mr Curling: It seems to me rather timely that this motion has come through, as we look at this motion with its 12 parts, and as you instructed, Mr Chair, we will be debating each one separately. I do hope, though, with this warning that this government will not behave as it has done in the past, closure on anything, and will give us adequate time to discuss this fully. There's an attitude here to rush democracy, rush participation, and it will not give people adequate time in which to bring their views forward. I hope as we go through this that I'm not hearing that some note will slip inside this committee coming from up above, or underneath, or where they get their orders from, to cut this short, because this is important.

Having said that, it's rather timely that this motion is here at a time when even as we speak, the government in the House now is doing closure, restricting the expression of not only the people of this province but elected members in the House of Parliament.

Mrs Sandra Pupatello (Windsor-Sandwich): It's the anniversary of Bill 26 today.

1600

Mr Curling: It is also ironic, as my colleague reminds me, that this is the anniversary of Bill 26, that bully bill, that bill where no one was allowed to make any presentation at all, giving the orders as they were given — the government, that is — to vote, just nod their heads and vote without even reading that bill, not giving the elected members here an opportunity to read it and make their presentation, therefore denying the people an opportunity to make their presentation.

How timely it is on this anniversary, the arrogance of it all, to say, "We can do anything we want." We have also heard the Premier of this province say, "We will ram this bill through," meaning ignoring any kind of participatory process. That, of course, takes time and sometimes

we'd like to hurry things along, but as we said, democracy is a very slow process. It's not the best, but we don't know any other. So I hope for your fair ruling, as it goes along, and that if any note starts slipping through here to wind this down, you would say to yourself that we get adequate time to discuss these motions.

"Discretionary referenda may be initiated by the Legislature of Ontario." I don't know who that is. Would that be a referendum initiated by the Liberal Party and so be it, or by the NDP or by the Conservatives? Or is it the majority members, of course the Conservatives, who have the numbers, who will prepare the line, and if a member of the Legislature puts forward that a referendum should come forward, a vote will go, what it will be, and then of course it will be ruled out because they have their numbers?

In his response at some time during the process I hope Mr Clement, whom I call the surrogate father for the 416 area who speaks on behalf of the megacity down here, will be able to tell us, because he's playing an instrumental part right in what should be said and what should not be said, who that Legislature of Ontario is. I notice you hide carefully behind the Lieutenant Governor, saying, "We don't know if we allow that," but we know who the Lieutenant Governor is. It's you, the government, that makes the rules with your majority. It's you, the government, and then the rubber-stamping goes on with of course the Honourable Lieutenant Governor.

Therefore I'm not quite sure if I know today whether the Legislature of Ontario is any one of us who can put this forward, feeling that a referendum could be discussed because it's necessary.

Let me tell you this too: I'm not one of those who is excited about a referendum. I find that sometimes it's a way of shortcutting the process. People are asked many times to say yes and no to issues that are extremely complex, and when the government so wishes, as my colleague Mr Morin stated, it could divide our country, it could divide our province, it could cause undue unrest with unsettling issues that could be quite damaging to the beautiful fabric of our Ontario.

I would like to know what discretionary referenda would be and whether the Legislature of Ontario initiating this is the majority of the House, which of course would be the government. In the meantime we hear it's a non-partisan view. Therefore it will be quite complex to know what all that will be.

There's much I have to say but there is much here, and I will leave some thoughts for the other 11 points as we go along in the couple of months to come of debate on this, because I see it's going on for a very long time.

Mr Tony Silipo (Dovercourt): I actually welcome the fact that we are finally beginning to discuss the motion Mr Clement has put in front of us. I think I've said on previous occasions when we tried to begin discussion on this that I personally and my caucus support the notion of referenda, both initiated by the Legislature of Ontario as well as the concept of citizen-initiated referenda. I've stated on the record and I don't mind repeating, although I won't repeat it at length, that the process suggested here is a useful one, particularly if we see the use of referenda not as a replacement for the parliamentary process we

have but as an adjunct to that process, that a number of issues can and should be dealt with through referenda.

I've appreciated in this discussion the fact that there has been some back-and-forth and I indicated in previous discussions on this that one of those was the move to 10% of the citizens — I know we're going to discuss that later on — in terms of the threshold for citizen-initiated referenda, which I think is a fair threshold, a more useful threshold than the initial suggestion of 5%.

I want to say also that I think, as I've indicated before, and I'll expound on these two points when we get to them in wanting to respect the sequence of the discussion we've agreed to, that there are a couple of things in here, one that we just strongly oppose, and that is having any sense of mandatory referenda, because we don't think there should be any issue on which there is an obligation on the part of government to hold referenda. So number 2 gives us some trouble and we will oppose that. When we get to number 7, I'll want to discuss further the issue of the protection of minority rights. I think there's something further that needs to be done.

Let me go back to what I think we are supposed to be discussing under item 1, and if you'll allow me, I also feel I need to address the opening words of the motion that's in front of us, because to me they're related to where the rest of it goes. Before I get into that I just want to be clear: My understanding is that whatever we pass through, this is not the report. What we are doing here is passing a motion at the end of the day that's going to give direction to legislative research to actually draft a report that will then come back and we'll have a chance to discuss it further and make some modifications if we so choose to that, but obviously we want to give some direction to the committee. I think that's important because then there may be a possibility for us not to get too hung up on every single word, although I think we should get it as close to correct as we can.

I just want to raise, therefore, in that context a couple of things. I have some questions that with some clarification will determine the degree of support I can give, but I think, from what we've heard before, that I'll be fine with item number 1, that the opening words of the motion talk about legislation authorizing the holding of provincial referenda on any topic within the jurisdiction of the Ontario Legislature.

I'm assuming that could involve referenda being held on items that would apply across the province, which are clearly within provincial jurisdiction, as well as items that might only apply to one region of the province but which again are within provincial jurisdiction. I think the issue that we all know is in front of us in this committee today and in the Legislature with the closure motion on Bill 103 is a very good example. That clearly is an issue of provincial jurisdiction, the decision around whether there should be one city or six cities in Metropolitan Toronto, and I assume that would be covered by this proposal. I see Mr Clement nodding. I know Hansard can't get nods on the record but I'd be happy, if you wish, to have Mr Clement answer that.

The Chair: Are you finished?

Mr Silipo: I'd like to continue, but if I can get —

The Chair: Okay. Mr Clement, do you want to speak to that?

Mr Clement: My intention in framing that particular segment of my motion was that it would deal with anything which would normally be debated in the Legislature, subject to the caveats which I have enunciated this afternoon. First, I think we all understand that it should not be something which is minor. Sometimes the Legislature debates things which are of minor importance rather than things which are of major importance, so my prayer is that this would be used for things of major importance. Second, my view is that sometimes the Legislature discusses things which are not in the form of a bill, and my reading of my own resolution is that it would only deal with things which could be put in the form of bills rather than in the form of resolutions or of general debate.

1610

Mr Silipo: I'm not suggesting we get into a discussion about the wisdom of whether to hold a referendum on some things or what is minor and what is major. We are talking here about recommending that there be a legislative framework established for quite frankly what is already in the power of the Legislature of Ontario to do. I think we all acknowledge and we all agree that with respect to the Legislature of Ontario deciding to hold a referendum, there is nothing today that prevents the government from doing that.

On that part of it, really what we're recommending here, if we agree to this, is just putting in law that notion, as well as all the process that would follow and the rules that would apply to the referendum process. I just want to be clear that the legality of what we're recommending deals both with potential referenda that would apply across the province — because the issue affects every citizen across the province — but that it could also deal with issues that would apply only to one region of the province, again using the example of Bill 103, the amalgamation of cities within Metropolitan Toronto.

My request would be, if there is agreement, that the wording of the report clearly indicate that we are talking about the whole breadth of provincial jurisdiction here so that there could be no confusion in people's minds on our report that this is the case. I would move an amendment to that but I'm getting the sense that there's agreement on that. If that's understood as part of the direction to the research, that's fine by me.

The Chair: Thank you very much. I'm recognizing members in order of their —

Mr Silipo: I'm not quite finished.

The Chair: Oh, I'm sorry.

Mr Silipo: Do we need an amendment on that, Mr Chair, or is that just agreed to as something that —

The Chair: I think Philip has taken note of your clarification and hopefully it will appear in the draft report.

Mr Silipo: As I say, I think that's important, given the context under which this discussion is taking place, because I have to tell you, and I suppose I'll make some of these points again as we go through some of the specific pieces where they apply, I have a lot of trouble understanding the seemingly inconsistent positions that are coming from the government side on this as well as, I have to say, from my Liberal colleagues. I don't understand the Liberal caucus position on this.

Mr Morin: Explain yourself.

Mr Silipo: I just heard Mr Morin earlier today reiterate the position that was presented earlier on behalf of the Liberal caucus which said that for a referendum to be held, there has to be all-party agreement. At the same time the Liberal caucus, as we are, is calling for a referendum to be held on the megacity bill.

Mr Morin: Two different issues.

Mr Silipo: You're not going to get agreement from the government party to hold a referendum, so you can't be saying in one place that you want a referendum and in another place that you want to put in a framework system that would prevent that referendum from taking place.

The flip side is what I have trouble understanding the Conservative caucus on. Here they are talking about wanting to have a referendum process in place, yet on a issue very important to 25% of the population of the province they're saying, "Sorry, there it doesn't quite hold." We get proposals being put forward by Mr Clement, the person who is recognized, justifiably, among the government caucus members as the author of these proposals, statements that try to diminish what is going on in Metropolitan Toronto by suggesting, for example, that the six mayors are administering the process or actively promoting and funding one side of the issue and they're in charge of counting the ballots. It almost borders on suggesting they're going to miscount the ballots and saying: "Well, that's not really a referendum, but at the same time, folks, we don't want to have a referendum so we're not going to help you have a referendum. We don't want you to have a referendum, but if you have a referendum, we don't think the rules you're using are the right ones, so we're not going to uphold it in any event."

I have trouble understanding that inconsistency. I think that what Mr Clement has presented to us would be a very logical sequence to follow in terms of having a real referendum in Metropolitan Toronto if the Conservative government were serious about having referenda.

I'll be quite interested as we continue through this in continuing to point out this inconsistency and in continuing to find out how it is that the government members can speak out of both sides of their mouths on this one. I'll be equally interested in how my Liberal colleagues will also be able to continue to justify their seeming contradictory positions on this. I mean, either you're in favour of having referenda or you're not.

You can talk about what rules have to be put in place and how they should apply. I agree, there have got to be sufficient rules. You want to have, and we absolutely need to have, in place a process that protects minority rights, and I'll have more to say when we get to that point in the discussion, but I'm sorry, you can't keep cutting it both ways.

I want to suggest to you that we have at least tried to be consistent in saying we support this. We've shown our movement in terms of indicating that as the government members moved on some of the concerns we had expressed in the early parts of this discussion, we equally would be prepared to show our willingness to eventually work on a legislative scheme that would deal with this. We're still here today saying that and prepared to do that.

I felt it important to put again my view and that of my caucus in just completely being flabbergasted with the inconsistent positions coming from the government, and I thought today we would hear a more consistent view from the Liberal caucus, but I guess that's not happening either. That's all I have to say on item 1. With that understanding on what's happening with the opening words, then I certainly would support item number 1.

The Chair: It's been my custom as Chairman, on discussions such as this, to recognize members to make their contributions as they indicate their interest. As long as the members are agreeable, I'll continue to do it that way. Next on my list is Ms Pupatello.

Mrs Pupatello: I did want to suggest at the outset, if I could remind the members of the committee, that the first time we began discussing the issue of referenda in Ontario I suggested that the government members who sit on the committee weren't cognizant of the real issues that drive referenda even coming to committee and what really is driving the government to bring this kind of bill forward.

I will say unequivocally that given a certain position at the very outset, that we would have unanimous consent on the issue and on the way a question would be worded — that might be a very high standard, but if we are not prepared as a group to assume that we would accept that, then there is no other way the Liberal Party would be in favour of referenda.

I find it highly strange as well that the NDP caucus would choose to be in a position to suggest that we are inconsistent somehow on this issue. Today in the House, for example, the member for Dovercourt stood and said, "Perhaps, Minister, you would like the legislators to just go away," and there were a number of members on the government side who nodded their heads in agreement, "Yes, we would like you to all go away." The member for Dovercourt then realized that there may be many on the other side of the House who would prefer not to have to go through the process of legislation with the way we do things here.

Mr Silipo: I never asked that question; you realize that.

Mrs Pupatello: All of us as duly elected members of the House have the opportunity to participate in debate when government brings forward bills on any kind of issue it chooses.

On the point that the member from Brampton makes when he proposes this list of 12, and even in the discussion on point number 1, that "referenda may be initiated by the Legislature of Ontario," we say at the outset that if all parties were to agree as to what that issue and the wording of that would be, we would have no problem. But when he makes his argument as to why referenda would ever be allowed and be written in a form that may eventually take the form of a bill, he makes the Liberal case exactly, that a government that is elected by the majority of the people in Ontario can bring forward any bill it chooses on any subject matter.

1620

There is a due process in place in this House here at Queen's Park to have a full debate by all of us. It is your bill, written the way you want it written on any topic you

would like, and there isn't a government member in the weeks that this has been on the table yet — not one government member can offer us an example of something that this government would choose or like to do in the province of Ontario where government policy is concerned that you cannot bring forward as a bill to be duly passed in the House as the majority government — not one example of it.

So you come today, after the break during the holidays and after some of the press have spoken to some of the government members about the issue, and choose to put this across now as being more friendly to the people, opening up the democratic process of Ontario. If the NDP caucus is going to bury its head in the sand and be so naïve as to think that is the driving force behind referenda legislation here by the Conservative government, our NDP friends are very much mistaken. We recognized very early on that there's a sleight of hand at work by the Conservative government of Ontario, by the Conservative Party members of Ontario, who have put this over on the people of Ontario as though it's being more accessible, letting them have their say.

The irony of this is that today we discuss details of your bill when you invoke closure in the House on the discussion of the megacity. The irony of introducing closure is that you're starting to see a trend, and if the number of people attending your meetings for the megacity started down here, by the end, in only a couple of weeks, you have grown those town hall meetings exponentially. Today you choose to close discussion, and you do so on the whim of saying, "Oh well, we're listening to the people." Clearly you're not; you're not listening to interest groups, to the general public, to supposed experts in the field.

All of the backbenchers are starting to get hits everywhere they go at home and today you choose to introduce closure in the House on discussion, but you can go to the people on the issue of referenda, have the nerve to go to them and say, "We are going to have an open, more democratic Ontario government." That, my friends, is a crock. Today of all days we talk about being the anniversary date of the hearings on Bill 26. Well, government members took the biggest hit they ever took in terms of a new government of the day because all of a sudden people started to see the government for what it really was — a total disregard and lack of respect for due process in this House. That was clearly pointed out to you by your friends across the floor, by your own members of caucus who knew you had done wrong.

This has become quite an ugly pattern for the government. For the first time in history in the Legislature of Ontario the Conservative government has been held in contempt by the Speaker of the House. That has never happened before to the Ontario government, and that is something that for new members — half of us are new members in the House this time; there are 80-some new members —

Mrs Margaret Marland (Mississauga South): On a point of order, Mr Chair: I'm wondering if the member for Windsor-Sandwich is speaking to the motion when she is referring to a decision in the chamber by the Speaker which had nothing to do with referenda.

The Chair: I would encourage the member to confine her remarks to the issue at hand.

Mrs Papatello: Thank you. The relevance of course of the decision of contempt that the government has for the Legislature, the relevance of that to this discussion is that when a Speaker ever in the history of Ontario could find the government of the day in contempt of the Legislature, and especially the member from Mississauga would understand this, having been a Deputy Speaker and very familiar with all of the terms there —

Mrs Marland: I wasn't Deputy Speaker.

Mrs Papatello: Or at least certainly familiar with the Chair. If I'm wrong there, I apologize.

The reality is that new members coming into the House — over half of the House is new — didn't understand how significant a decision that was because we don't have as much time here, but those members who had been here for 20 years were absolutely astounded by this ground-breaking announcement that the Speaker had made, his decision. What it clearly said was that the government is not allowing for due process, because the contempt charge, which was then upheld and found guilty on that count, was specifically because the government refused to go through due process when it brings forward legislation and then goes to the people and tells them what it's doing. That is what you did that was wrong.

Here you are today talking about referenda, saying out of the other side of your mouth that you're going to the people of Ontario because you want to be open and accessible and let them have their input by virtue of having a referendum on some issue. You cannot have it both ways. We certainly have a lot to learn as new members, half the House does, in terms of recognizing how significant a decision that was, but if the new Liberal members have much to learn, so too do the backbenchers and/or new members in the Conservative Party, that in your own government you are in contempt of the very process of bringing a bill forward into law in this House, that you would go forward and subject the population to information that isn't appropriate, such as was done in this issue of referenda.

The government member from Brampton went forward and had a discussion about referenda with the Toronto Star and suggested that the committee and/or other members think somehow that the public couldn't understand a referendum issue or that we're not giving them enough credit. No, no, we give the public an awful lot of credit. Every one of us who sits here and has been duly elected gives them more and more credit. We have a highly sophisticated electorate and that causes us all the greater concern, because when you have a government that is prepared to be in contempt and the very next day goes ahead and does the very same thing, like it did with the fax campaign — you remember that issue and all of that —

Mr Clement: Are you going to filibuster again for the whole afternoon, Sandra?

Interjections.

The Chair: Order.

Mrs Papatello: Here we have example after example of a government that's not prepared to listen. The irony

for me is too great. To sit at committee and discuss the issue of referenda that you'd think they would bring forward because they want to be more open to the public, can't you see the irony of this? It's astounding to us sitting here. We want to be realistic. We would like the public to know that this has nothing to do with being more open, in terms of being more democratic. We expect the Conservative government to be responsible to the electorate for the decisions it makes. They will hold you accountable.

This document, this list of 12, this discussion that we're having, is simply a tactic to allow you to bring legislation into the House, to let you offload and dump the decisions on the public and put it to them in such a way as all cases in history show us they will have been passed.

For the benefit of the member from Mississauga, I'm more than pleased to go back to the five-hour dissertation before Christmas and discuss the many examples, such as Proposition 13 in California, when you ask the question to the electorate and what it has a tendency to do and how governments of the day played on those tendencies to effect the outcome they were looking for and therefore tied the hands of future governments to ever be responsive to the real needs of the people in those constituencies. That was the outcome of Proposition 13 in California. That is the dangerous road the Conservative government has us heading towards.

If you were reading for these issues, even over this past weekend, there was a very interesting document that was prepared in the press. It spoke about the historical voting patterns in the state of Florida and that when you brought forward certain referenda items that had to do somehow significantly with the seniors population you could guarantee what the outcomes were going to be. When you asked a more senior population about the funding of education, it was always no. When you asked the same population about an issue that had something to do with seniors' health services, the answer was always yes. The American states have a litany of examples of how referenda have been used in this regard.

It is not acceptable for the Conservative government of Ontario to turn its back on the very people who elected them and do it by sleight of hand. I expect members of this committee to stand up and say what you are really doing because you're doing it on the basis of something that is simply not the truth.

Mrs Marland: First of all, Mr Chair, I would ask you to ask the previous speaker to withdraw the accusation that any members of this committee are doing something not on the basis of truth, because that accusation accuses any member of lying and I will not condone that unparliamentary accusation.

1630

The Chair: Do you care to withdraw that statement?

Mrs Papatello: No.

The Chair: Could you repeat again what you heard her say?

Mrs Marland: Her accusation was that members were not telling the truth.

Mrs Papatello: No. What I said was that I expect the Conservative members to come here today and tell us the

truth about why you are really bringing this legislation forward. If you care, Chair, we could review Hansard —

The Chair: I would ask you to withdraw it in the interest of decorum on the committee.

Mrs Papatello: — and if the member finds it offensive, then I would withdraw that.

The Chair: Thank you very much, Mrs Papatello. Mrs Marland, you have the floor.

Mrs Marland: The previous speaker used the word "irony" a number of times. I don't like to keep coming from a historical perspective, but if you have been in this place as long as the member for Scarborough West —

Mr Curling: North.

Mrs Marland: — the member for Scarborough North and I have been — Mr Curling and I have been here for almost 12 years.

Mr Morin: The member for Carleton East also.

Mrs Marland: It's not the member for Carleton East whose comments I wish to address, but it's true, we were all elected in 1985. When we talk about, as the previous speaker did, what new members know and what old members know and what difference that makes —

Mrs Papatello: More experienced members, not old.

Mrs Marland: — in terms of what we do, I think it's a very interesting comment, because one of the things that has always been cherished on this standing committee of the House is the non-partisan aspect. There has always been, traditionally in the Legislative Assembly committee, an approach to debate, resolving problems, sometimes very personal problems for individual members — we on this committee have a great number of subjects referred to us. The best part about all of us trying to be non-partisan is that it bodes well for more productive work.

One of the things that I see going on very clearly today is that today's meeting is in a committee room which is being televised. I really would like to commend the member representing the New Democratic Party today for the fact that he was very frank, very straightforward, and he was not partisan.

Mr Silipo: I thought I was.

Mrs Marland: He made one comment about not being able to understand the Liberal position on this subject, but he didn't go through all the rhetoric that we've just heard from the previous speaker.

I think one thing that we should remember in debating this motion is that, with all significant reports from the Legislative Assembly committee, we are not making decisions just for today. We are making decisions for the future of the Parliament of Ontario, and that is very significant. I think when we look at the history of the Legislative Assembly committee — which was here, I may add, respectfully, long before any of the members who sit on it today were here and will be here long after we're all dead and buried — we would do a better job to serve the people of Ontario if we tried to make this debate conducive to the best solution for the people of Ontario.

I heeded very closely the constructive comments — Tony, I'm sorry, I'm drawing a blank on your riding.

Mr Silipo: Dovercourt.

Mrs Marland: I listened very carefully to the member for Dovercourt's constructive comments about the

preamble to the motion, and in fact as a result of what he raised, I too have a question on one of the points that he raised. But I think if we're going to talk about ironies and what other matters are being dealt with in our chamber, as the member for Windsor-Sandwich said to the viewing audience that for the first time ever such and such took place last week in our chamber, sadly we might all remember that for the first time ever in the fall of 1985 the member for Scarborough North did something in the chamber that has never been done before. I would not put on the record that which he did, because all of us know what it was.

Mr Curling: I don't know what I did.

Mr Morin: On a point of order, Mr Chair: The member for Mississauga South is not talking on the issue.

Mrs Marland: You didn't interrupt your own member when she wasn't speaking to the issue.

Mr Curling: On a point of order, Mr Chair: I want to know what I did in 1985.

Mr Silipo: I don't know. What did you do in 1985?

Mr Curling: You can't put it on the record — my winning the riding?

The Chair: That's not a point of order, I'm afraid. Mrs Marland, you have the floor.

Mrs Marland: All of us know what the member for Scarborough North did in the middle of the night in the chamber, but also what I could refer to as a lady is that he disobeyed the standing orders. He refused to vote during a recorded vote and then he refused, when named by the Speaker, to leave the chamber. So if we're talking about who does what here, I think it's very important that we're very fair. If you're making accusations and you're dragging in a lot of rhetoric, you're better to deal with fact.

I would simply say to you that if we're looking at records of commitment of members, there are members on this committee who are committed and abide by the standing orders and recognize, as I think the member for Dovercourt does, that certainly the NDP have some issue with, I think he said, two or three of these 12 items in this motion, but he's being constructive about that and he's going to deal with them as he comes to them.

The other thing I would like to say, Mr Chair, because it has been accepted by you as part of the debate on this motion, is the comment on closure that is in the chamber today. To hear the member —

Mrs Papatello: You can't deny it. It's on television.

Mrs Marland: Excuse me —

The Chair: It was raised by Mrs Papatello and I will allow Mrs Marland to make a response.

Mrs Marland: It was the topic when your colleague was speaking about it, so it certainly is permissible to be the topic when I'm talking about it. You're talking about the matter of closure on Bill 103, which is the amalgamation of Metropolitan Toronto. The reason for closure is that it's closure on second reading; it's not closure on the passage of the bill.

Mrs Papatello: It's closure.

Mrs Marland: It's closure on second reading, and closure on second reading means that we can get that bill out to the public.

Interjection.

Mrs Marland: I say to the member for Windsor-Sandwich, I did not speak while you speaking.

Mrs Papatello: Actually you interrupted me twice on a point of order.

Mrs Marland: Once on a point of order, but I didn't speak while you were speaking.

For those people who are concerned about what closure means, our government wants to hear the public input on Bill 103. We are setting aside something in excess of 103 hours — that was the last number of hours that I heard — for public input. We cannot get to that point of committee hearings for public input unless the bill gets through second reading in the House, and we are closing the debate at this point in the chamber on second reading so we can go to the full committee hearings. We are not putting closure on the passage of the bill today. I would think by now those members opposite would understand the difference between second and third reading.

1640

To the motion, the comments of the member for Dovercourt about the preamble: He moved that the Legislative Assembly committee's report indicate that legislation "authorizing the holding of provincial referenda on any topic within the jurisdiction of the Ontario Legislature" — since so many provincial statutes govern other existing levels of government — I'm asking this question of Mr Clement as the mover of the motion — we would be into things, for example, like the Municipal Act and the Planning Act. There are so many areas that come under the jurisdiction of the Ontario Legislature where we have given local jurisdiction through those very statutes.

My question to you is, have you looked at the interpretation of this wording? "Within the jurisdiction of the Ontario Legislature" is very broad and goes down through the regional municipality acts and the municipal acts. If a municipality decides to hold a referendum, would it still come back to the province for the approval even though we've already given it autonomy under the Municipal Act? If you could answer the question, then I have a second question.

The Chair: Mr Clement, would you care to answer that question?

Mr Clement: I have a comment on my colleague's point. There are a couple of related issues which would eventually have to be addressed within whatever legislation the Legislature proposes to pass on this issue. It would seem to me as a matter of law that if the Legislature, through one of its acts, delegated certain powers to an agent or another level of government, it would be inappropriate for the Legislature then to seize those powers on a particular issue. That would seem to me to be a matter of law.

For instance, matters of a purely local nature, say, fluoridation of water or bylaws relating to particular planning decisions within a municipality, all of those things, because they've been delegated to that particular level of government, it would seem to me we would leave the question of a referendum on those issues as a matter of course to that particular level of government. We would not seize back power in those particular areas.

The issue becomes quite interesting, however — and you've touched upon this, Mrs Marland — as to what happens when an issue could be argued, depending on which side you're on perhaps, or could be seen both as a local issue and a provincial issue. To Mr Silipo and others, one could argue in all honesty that Bill 103 is exhibit A on something which is perceived to be a local issue by some and a provincial issue by others. I acknowledge that point. It would seem to me that in that case however, as a matter of law, the Legislature is seized of the issue, and if there is a conflict between local and provincial, the province should obtain the ability to trump on that issue, that is to say, to continue to be seized on it and to then be in a position, should the Legislature so choose, to have that issue decided by a referendum, if that is in accordance with what the Legislature wants.

Mrs Marland: This referenda legislation is going to have to be very clear about where they have delegated the authority to another level of government through their own provincial law. They're going to have to be very clear about under what terms and conditions that would change or that would be challenged. I think that's a very important point, frankly, that the member for Dovercourt raises, because of the ripple effect.

Mr Clement: Quite so.

Mrs Marland: The other question is the question raised by the member for Scarborough North in item 1: "Discretionary referenda may be initiated by the Legislature of Ontario."

I would think that the member for Scarborough North, having been elected 12 years, knows full well what it means where there is a reference to the Legislature of Ontario. I can't believe he's asking, "Who is this?" or "What is this?" The Legislature of Ontario did a whole lot of things when you were Minister of Housing in the David Peterson Liberal government and I don't think you questioned then who the Legislature of Ontario was.

The question about who the Legislature is and what powers does the Legislature have as a Legislature: I just don't understand that question because we're in big trouble if we sit on this Legislative Assembly committee and we don't know what the Legislature of Ontario is.

Mr Curling: Do you want me to respond to that?

Mr Morin: No.

Mrs Marland: It's actually probably a rhetorical question.

Mr Curling: Oh.

Interjections.

The Chair: You're on my speakers' list, Mr Curling. Have you some rhetoric to add to this?

Mr Bud Wildman (Algoma): I would just like to get on —

The Chair: You're on the list.

Mr Wildman: So I can make a rhetorical —

The Chair: Are you finished, Mrs Marland?

Mrs Marland: Yes, I have, on item 1.

The Chair: Next on the list is M. Morin.

Mr Morin: I'd just like to make a correction first as to the statement Mr Silipo made, and perhaps I wasn't clear enough when I made my presentation.

Mr Silipo: The words are clear.

Mr Morin: I will reread again: "Let me remind committee members that the Liberal caucus does not oppose referenda per se. We are very supportive of referenda and plebiscites, initiated by democratically elected local governments" — that's very clear, local governments — "that is their right as enshrined in their governing legislation, as well as a long-standing tradition in this province and indeed across the country."

"What the Liberal caucus is opposed to is this government's motion to introduce provincial referenda on issues that we feel are more appropriately handled without resorting to the expensive and possibly manipulative referenda process that allows the government to walk away from its responsibility for what it does."

That was the statement. I hope it's clear. If you need further explanation, of where we stand I will give it to you.

Mr Silipo: The words are clear, Mr Morin —

Mr Morin: Okay, good. Now I would just like to comment on some of the —

Mr Wildman: I find it opaque myself.

Mr Morin: — remarks that were made by Mr Clement. I heard you say, and correct me if I'm wrong, that in a situation like what's happening right now with the municipalities, Metro, the province should reserve the right to say, even though they have the right to do that, "You're now allowed to hold a referendum on that issue."

Does it mean that you would take away their right, as enshrined in their governing legislation, to hold a referendum or a plebiscite, or is it your intention to amend the legislation?

You said in your statement a minute ago that it was a question of law, especially when you deal with an issue that you know affects a lot of people, that perhaps it would be a good thing for the government to say: "Well, no, in this instance, municipalities are not allowed to hold referenda." That's the way I understood it. Correct me if I'm wrong. If this is the case, is it your intention to amend the legislation or are you planning to take it away from the municipalities?

Mr Clement: I'd be prepared to answer that to avoid any further confusion on Mr Morin's part.

First of all, I was speaking to the question of delegation of powers, if the province has duly delegated certain powers and authorities to another level of government. That was how the issue came up: What would happen if the province then seized an opportunity to weigh in through referendum on issues they had delegated? I said in my mind it's a matter of law that once it is delegated it truly becomes an issue which the local government is seized when it comes to referendums as well.

With respect to the issue at hand, I guess you're referring to Bill 103, and I'm reading a bit into your question, but you're interplaying that with Bill 86, which was the bill that amended certain portions of the Municipal Elections Act, which provided for various ways and means for local governments to initiate plebiscites on particular issues.

Mr Morin: Or referenda.

Mr Clement: No, plebiscites. To be quite technical about it, a plebiscite is a non-binding referendum, and a referendum in all the submissions we heard refers to

decisions that then become binding upon the authority, on the state or the government — the state meaning small-state.

1650

In that particular sense, it is the government's view that certainly under Bill 86 the municipalities do have the authority — I personally applaud municipalities that take that authority seriously — to engage in plebiscites, opinion polls or other means. That is all fine, but then to transpose that and say this process we have enshrined in Bill 86 for plebiscites then becomes the process for binding referendums is a leap of logic that this government is not willing to jump.

Mr Silipo: That's why you should hold it.

Interjection: That's right.

Mr Wildman: That's why it should be provincial —

Mr Clement: The sooner we get through this, the sooner —

Mr Wildman: You could do it without this legislation.

The Vice-Chair (Mr John Hastings): Mr Clement has the floor.

Mr Clement: If I may speak to that, the members opposite are saying, "Hold the referendum." As I'm saying in clause 1, the government and the Legislature of Ontario would have the discretion under this proposal to initiate referendums on any topic within its jurisdiction.

Mr Wildman: They can already do that now.

Mr Clement: They can already do that now. The issue, though, is this government has made a choice we feel comfortable with, that in this particular case what our proposals mean for Metropolitan Toronto is a logical extension of the views we expressed in the provincial election. Page 17 of the Common Sense Revolution refers to reducing the number of politicians locally and reducing the layers of government locally. So this is a logical extension of the mandate that we perceive we received from the people of Ontario in the election.

From our perspective, we are being utterly consistent with the mandate we received, and we as a government decline to hold a referendum on that issue because we feel we have the mandate to pursue the objects we are pursuing.

Mrs Pupatello: Therein lies the problem.

Interjections.

Mr Clement: When we get to part 3 of my motion, there may be circumstances where citizens disagree with that decision —

The Vice-Chair: We've got one speaker on the floor and it's Mr Clement. Thank you.

Mr Clement: — where citizens may disagree with that position. There may be circumstances, and it has happened in this Legislature before, where all three parties agree on a particular course of action, but some citizens don't agree with that course of action. In either of those cases we are proposing a method for citizens to initiate referendums so that the government of the day or the political class do not monopolize the decision as to whether the people will be consulted or not.

I might add, however, that is not the case in Metropolitan Toronto. The citizens have not initiated a petition. Six mayors sitting in a room have initiated a referendum proposal.

If the members opposite are seeking to understand what the government position on this is, I hope my comments have cleared that up for them.

Mr Curling: I just want to make some quick comments in regard to some of the concerns that the member for Mississauga North —

Mrs Marland: South.

Mr Curling: — South had raised when she —

Mrs Marland: You'd think we'd know each other's ridings. I didn't know yours and you didn't know mine.

Mr Curling: — asked whether it would be a sad situation if I didn't know who the members of the Legislature of Ontario are. I'm very happy she did that because in her statement she also stated that we must understand that closure is not on the bill, it's just on second reading. Let me just talk about it because we are talking about a body here that has the power now to bring about discretionary referenda or mandatory referenda.

Those of us as a public body here who are elected go through a democratic exercise in the House of Parliament here which we call debate, meaning that we are elected to bring the views of the people into the House and to express those views and some of those concerns, and when we feel we have exhausted that process, then the public itself would have a chance to hear. That, I would like to tell the member for Mississauga South, is the process.

What has happened is that we can't even exercise the normal democratic process here, to be heard, those who are elected. My demonstration, as she calls it, was in protest of the undemocratic way this government behaved, refusing to listen to us, and at the same time, right now, with Bill 103. Many of your colleagues on our side were just shocked to know this is happening but can't say very much about it, but we will speak for them if they feel they should not speak. We have that right to speak. When you shut that down, how can we then say that you will hand this discretionary power or mandatory power to a public body where they will then say —

Mrs Marland: The same powers you used when you were in government.

Mr Curling: — "We will tell you what you ask, when you ask it and how you ask it."

Mrs Marland: Did you never bring in closure?

Mr Curling: Many times what they will do is they go back into history.

Mrs Pupatello: That was the NDP who did that, remember?

Mr Curling: You're right. The NDP, when they were in power, even went beyond contempt. They didn't want to even hold the House of Parliament. I think we had one of the most limited times of sitting to hear what the people who elected me here to do, to hear the views of Scarborough North, Windsor-Sandwich and all the members who were here. They refused to hold the House.

Mrs Marland: Did you never bring in closure, Alvin?

Mr Curling: I'm saying that right now as we prepare ourselves to give powers, as they said, to the public bodies for holding referenda, I question the fact that they do not behave in a democratic process even within the House here. Closure is one of the greatest insults to that

democratic process and not only that, refusing an opportunity for members even to comment on bills before they're even heard, shutting us out in that process. I question, who then is the Legislature of Ontario? Is it those people who behave in that bully way, as the Minister of Community and Social Services said, "We have the power and since we've got the power, that's how we behave"?

Mrs Pupatello: That's what she said.

Mr Curling: Tell me something now, is that the kind of power we want, that this government then call — I'm not part of that power. I'm not part of that Legislature of Ontario and that is why we are confused today.

Mrs Marland: You held the chamber under seige.

Mr Curling: I make no apology to bring this place under seige again.

Mrs Marland: Oh, you admit you did it.

Mr Curling: If we are denied the basic democratic process, to exercise what I'm elected to do, if you do that, you not only insult me, which is not very much, but you insult the people who elected me to come to this House, and you continue to behave in this manner daily. I don't feel I'm comfortable with this kind of government and I will resist any kind of dictatorial way they behave themselves. So I have a lot to say as we go down here on the other 11 points.

The Chair: Next is Mr Wildman, if you're ready.

Mr Wildman: Thanks, Mr Chair. I must say I've found this debate rather interesting. I might be accused of being —

Mrs Marland: Don't leave. You've got to hear him.

Mr Wildman: No, it's fine. I must say that it appears, if I were to be rhetorical, that the government's position is that the government can initiate referenda and will do so as long as they know they can win. The Liberals' position seems to be sort of along the lines of William Lyon Mackenzie King: referendums if necessary but not necessarily referendums.

Mr Clement: A party of tradition.

Mr Silipo: So they are consistent.

Mr Wildman: I suppose.

Interjections.

Mr Wildman: If we want to talk about Bill 103 for a moment as an illustration, and to be quite serious about this very important matter that is before the House and before the people of Metropolitan Toronto, I think it would have been far more appropriate for the government to have issued a discussion paper — a white paper or a green paper, I never can tell the difference when they use them in the federal House of Commons. What is the difference, clerk, between a white paper and a green paper?

1700

The Chair: A white paper is a statement of government policy that's more definitive than a green paper.

Mr Wildman: As a what?

The Chair: It's a statement of government policy. The government commits itself with a white paper, I believe. Is that not correct?

Mr Wildman: And what's a green paper? Just a discussion paper?

The Chair: It's less of a commitment.

Mr Wildman: So we have a discussion paper before this committee right now. In terms of Bill 103, I think it would have been far more appropriate for the government to have issued a green paper on governance in Metropolitan Toronto and initiated discussion, much as the government has done on this matter before this committee, throughout Metropolitan Toronto about the pros and cons of changes in governance in the region.

Then after a considerable period of time, where municipal politicians, members of the public, members of the business community, everyone who wanted to become involved had had an opportunity to participate in a debate, a dialogue about the proposals, based on the opinions expressed in that kind of a process, the government then could have moved forward to a policy position, and subsequently, I suppose, if changes were deemed to be favoured and appropriate, to legislation.

That process might have involved a referendum at some point, and I think that would have been a far more appropriate procedure. Instead we have a situation now before us where you have a political party in government that when they were in opposition indicated that they believed there should be changes in governance in this community, but the governance changes they proposed were the opposite of what they now have brought forward before the House and have presented to the people of Metropolitan Toronto.

Initially we had the minister responsible saying in the House and outside of this place that there would be no referendum, or if there was, it was a waste of money and time because the government wasn't going to pay any attention to it, and the Premier confirmed that position. Then subsequently, because of the pressure built up in the community and because of the acknowledged stall tactics of the opposition, they have said, "Okay, fine, we won't pass the legislation into law until after the referendum," but we still do not have any clear indication from the minister, the Premier or the government as to whether or not they will pay attention to the outcome of the referendum.

So we now have a situation where we have a commitment that there will be hearings, we have a commitment that the legislation will not become law until after the referendum date, but we don't have any indication about whether the outcome of the referendum will have any major bearing on the government's position with regard to the legislation. I think that's most unfortunate and I do think that is in fact not in line with the proposal which is before this committee. For that reason, I'm disappointed and that's why I suggested that perhaps an amendment, if we're going to be completely honest, might be appropriate in saying the government is in favour of discretionary referenda when and if the government believes it can win.

Mrs Marland: Now, Sandra, that's a classic, constructive, non-partisan debate on the Legislative Assembly committee.

Mr Wildman: She's not going to let you off the hook.

The Chair: Mrs Pupatello, you're next, and Mr Hastings after that.

Mrs Pupatello: I must say at the outset that one thing I do recognize as a new member — and granted, my first

election was June 1995 and I'll be the first to admit at any time that I certainly have much to learn in my role as a legislator representing my constituents here at Queen's Park — I'll tell you that I don't think that process ever does end and many of those who are not in their first term but perhaps in their second and third have seen many, many changes happening here in the House since they were here. I just get to read about it in a textbook and then hear anecdotal stories of our history. But it certainly leaves people like me, who have those options available to us, to learn about what it was like and what things like "democratic process" mean.

Growing up as I did in Windsor, I certainly had my own views as to what it would be like when I came here. When I understood what the rules were, I understood that the rules meant exactly that, that regardless of party, I as a member of the House would have my opportunity to participate in debate, to participate in the process of forwarding potential amendments to bills etc.

When we talk about this, I have to go back to the very first question I asked government members where it concerns referenda. Tell me what issue, what single item the Conservative government would like to introduce as public policy in Ontario that cannot be dealt with by introducing a bill into the House in the process we have in place here to effect that as policy. The current government has a majority government, as we have seen through all of the other bills, many of which the Liberal Party has not been in support of but you've passed them anyway. Sometimes there has been a little change because you have been prepared, in a very few cases, to listen to input when it has gone to public hearings.

The issue becomes, why are you going forward with this? Tell me what city or town today cannot hold a local referendum, a plebiscite. They have the power today to do so. Tell me which Ontario government cannot hold a referendum today. We all could have; we all can. We have current legislation in place in Ontario to allow for referenda. That's why when Mike Harris was on the campaign trail, on the issue of casinos alone he said, "We will not open another casino in Ontario without a province-wide referendum." I know the government members remember this. Our dear member from Sarnia, this is a key issue for you. You knew that's what your Premier had promised.

That's a Premier's promise that simply did not come true. They announced the Niagara casino. They had no provincial referendum on that issue, yet that's what he said he would do, and he didn't do it. Of course, those of us who came from Windsor were most concerned about that type of referendum because we already had one open and functioning in Windsor. What would it mean to the citizens and indeed the employees who work at the Windsor casino?

The point was he knew he could say that as a promise — whether he keeps it or not is another issue — because Ontario as a government can hold a referendum tomorrow. They don't need legislation to do so; they can hold it tomorrow. Can citizens in the cities and towns they live in hold referenda and plebiscites at that level? Of course they can. Do the people of Ontario have an election every four years to put you in the position to

make those kinds of wise decisions on their behalf? Of course they do.

When those are the answers — and there's not a government member who can defend that that indeed is not the lay of the land today where referenda are concerned, because that is the fact of the matter — what is really driving you on this? What is driving this government to put this forward in this way?

At one of our former meetings, the member for Durham East, John O'Toole, made it very clear, because I asked that very same question in December 1996: What do you want to ask the people that you can't ask now, that you can't do now? What's the question? He blurted out — probably our leader in this regard, the member from Brampton, didn't want him to say it so rapidly — "Taxes. I want to ask the people about taxes. We want to stop increasing the taxes."

Here we see in this list of 12, under number 2, as has been put forward by the government members, "Mandatory referenda shall be initiated on issues involving the Constitution of Canada or Ontario or involving new taxes paid" — oh, how very deft of the government to put it forward in this way. Does this mean no new user fees?

Mr Clement: On a point of order, Mr Chair: We're not on number 2, we're on number 1. If the member can restrict her comments to item 1.

The Chair: I remind the member to confine her remarks to number 1. When we have an opportunity to discuss point number 2, some of these arguments will become more relevant perhaps.

1710

Mrs Papatello: Thank you, Chair. The relevance is that number 1 discusses the very issue of referenda and why you would choose to have them, and the member for Durham East responded immediately, "Taxes," and said that's what it was. Yet did the member from Brampton tell the press, when asked about why they were doing it, that the driving force behind the Harris government introducing this legislation is not about open democracy for the people of Ontario but is everything to do with tying the hands of governments today and in the future? That is a Republican thought, that is a Reform government thought, and that, my friends, is what is at play in today's Harris government in Ontario. I need to hear that the members opposite will admit this.

Some of their members have, of course. Caught off guard, they admit what their real agenda is. But clearly if you cannot answer the question — and that is, "Can cities and towns hold referenda today?" Yes. "Can the Ontario government hold referenda today?" Yes —

Mr Curling: So why do they need this?

Mrs Papatello: — if that is the case, there is not an issue that the Harris government cannot bring forward in proper legislation in the system we currently have. So I expect the members to come clean and tell us the real agenda at work, because I believe the people of Ontario have a right to know that.

The Chair: Next I have Mr Hastings, and after that, Mr Clement.

Mr John Hastings (Etobicoke-Rexdale): Thank you, Mr Chairman. It's interesting to try to delineate out here the position of the various parties.

Mr Silipo: Don't say anything nice about me.

Mr Hastings: I was actually just about to make a comment about the member for Dovercourt. That's the way we'll start in fact. My recall is that we were having these hearings about referenda and the various groups came and made their views known, particularly on protection of minority rights and some other related matters. The member for Dovercourt admitted publicly, and it's in the notes, how difficult it was for the members from the NDP caucus to struggle with this issue.

I thought that set a pretty good tone in terms of how we all were struggling in a sense, and when we got to the point after the hearings and had our researcher go back and look at some of the technical issues of what subjects could be referred to the Supreme Court of Ontario, what ball-game rules we would operate under, we had a reasonably decent, civil tone.

I regret very much what I see has happened since before Christmas in terms of where we were going in that struggle and the portrayal or the depiction by the members of the Liberal opposition that there is some hidden agenda in this. It becomes sort of ludicrous when you try to bring the debate up a little bit in terms of what sort of subject matter could be put to the people or where the citizens and voters could initiate their own petition on a subject.

I would like to say, Mr Chair, that after we had the performance in the meeting by the member for Windsor-Sandwich, I think it was in early December, when we were trying to come to grips with this problem of what kind of report we would issue, what could be some of the common themes or principles or guidelines by which legislation could be drafted, I find that the whole tone of debate or conversation or whatever you want to call it has declined significantly.

I recall that M. Morin came in and presented the Liberal Party's position on the issue, and if you look at the Hansard of the committee of December 4 or around that time, we got to the point that there would be a committee, a tripartite group with a member of each caucus designated or however, to develop the skeleton framework of how you could create referenda legislation: what would be the principles behind it, what would be the protections so that you wouldn't end up having questions going to the Supreme Court of Ontario over items linked to the Human Rights Code or to the Charter of Rights, so that you wouldn't have questions that would be unconstitutional in the greatest sense.

Immediately after that, Mr Chair, the member for Windsor-Sandwich completely contradicted, and we listened to almost two hours of the evils of referenda, citing the California example. While that was true from some of the groups that made their views known, other groups came before us with sincere concerns and suggestions that you could hold referenda using the Swiss model as a possibility. There are some problems with what is happening in Switzerland in terms of participation and turnout, but I thought it was and is a good model to look at this whole situation. Then the whole debate seems to have gotten off track to some extent.

There is to some extent an imputing of motive in this debate. For example we have heard there's a Republican

agenda. Just because I bring up the subject of referenda doesn't necessarily mean I'm a card-carrying member of the Republican Party of the US, which is absurd in its ultimate sense and illustrates the way in which this debate about the subject matter has gotten off track.

Then there was the reference made back in that meeting in December in which all the government members of this committee were somehow thinking we could create a California — that's what I wake up to every morning? — which is another absurdity. That's the sort of stuff I find so regrettable. If the member for Windsor-Sandwich in her two-hour presentation, to put it mildly, had said, "Yes, there are some problems with California referenda; there is an excess of them and to a great extent it's a money-making industry," all those things I could agree on.

She focused on Proposition 13 and then went on to declare that basically, because we're even discussing this subject at length, there is again a link, somehow or other some mysterious hidden agenda. I find it regrettable that we have to be subjected to that sort of an imputing of motive. I got elected to come here hoping that sometimes we could rise above that to some extent, difficult as that is.

Mrs Papatello: Answer the questions, then.

Mr Hastings: Mr Chair, you notice when I was chairing when the member for Mississauga South spoke, when the member for Windsor-Sandwich was speaking, I tried to restrain myself. I don't always keep that due regard. But here we are, I'm making my remarks — "Just answer the questions." Talk about us having some sort of inability to listen. Because we happen to be a majority government and therefore we won't listen is again another one of those imputing of motives. I've got to the point where I'm really quite fed up with that sort of approach. I would like to refrain from making these comments in any sense an attack, so we will get to some of the questions here.

The member for Windsor-Sandwich says, "What specific examples of items could be found in a referendum?" I think the question of taxation could take different forms. The member for Windsor-Sandwich points out that you really don't need any referendum legislation whatsoever because we already have the capacity to carry out referendum legislation. I don't know where that is in an actual bill. I can't find that the election commission of Ontario —

Mr Wildman: It's there. That's why we had one on the Constitution in Ontario.

1720

Mr Hastings: At that particular time, yes, but they do not have a consistent, regular — there's not a format and it took an awful lot of work for them to develop the ways in which they could implement that legislation.

That's one of the purposes of having a referendum body, suggested by Mr Clement, regarding the use of justices of the various court levels providing an air of impartiality.

With respect to the use of referenda municipally, yes, municipalities can carry out referenda, but they usually aren't binding unless it's a specific issue related to the Municipal Act, if I recall.

Mrs Papatello: It has to be approved by the OMB.

Mr Hastings: There we go again, Mr Chairman, see? I would ask you, Mr Chairman, let's try and get a little more — talk about order and decorum. I admit that I'm one of the —

Mrs Papatello: On a point of order, Mr Chair: I apologize for the previous interjection. My concern is that the facts be laid on the table, and when statements from the government members simply are put in actual factual terms you can understand my concern.

The Chair: That's not a point of order. Mr Hastings.

Mr Hastings: Thank you very much, Mr Chairman.

Mr Wildman: That was a summary ruling.

Mr Hastings: I would basically just comment that municipal referenda can be held — usually they're on subjects linked to the Municipal Act — to be binding. Citizens themselves can make suggestions to local governments, but those aren't citizen-initiated as proposed in the discussion paper that was presented late last year.

My final comments relate around some of the dialogue again with respect to the member for Scarborough North. I found it very disturbing that he said, with regard to order and decorum and how government is acting in a dictatorial fashion, he himself would determine when he would proceed to set out a new context in which he would ascertain whether or not an action was dictatorial. I find that quite amazing, based on previous behaviour. It's not surprising to me. I think he also said if it came to the set of circumstances he'd do so again.

This brings me to the whole issue of order and decorum, which is a subject that was raised in this committee over a year ago and has never been dealt with, and I guess to some extent —

Mrs Papatello: Mr Chair, is that on topic?

Mr Hastings: — creates a problem for where this committee is going.

Mrs Papatello: Mr Chair, will you make the same ruling on both sides of the table?

The Chair: I endeavour to be impartial, Mrs Papatello, and I'd ask Mr Hastings to confine his remarks to the topic at hand.

Mr Hastings: I think, finally, that point 1 has been well focused on and we can, hopefully, move to point 2.

The Chair: Mr Clement, did you have a quick concluding comment?

Mr Clement: Yes, Mr Chair. I would like to ask your permission, whether you could determine if there is unanimous consent to divide my motion into 12 constituent parts.

Mr Wildman: Agreed.

Mrs Papatello: No.

Mr Clement: Then I have no further comments.

The Chair: Okay, we now move to point 2.

"2. Mandatory referenda shall be initiated on issues involving the Constitution of Canada or Ontario, or involving new taxes paid by Ontario taxpayers."

Discussion? I saw Mr Clement first.

Mr Clement: I'd be happy to talk briefly about this particular part of the motion. By way of parenthesis for the record, the first three segments of the motion deal with discretionary referendums, mandatory referendums and citizen initiatives, which were delineated by Mr

Kaye, our legislative researcher, as the three parts of referendums that we heard so much about in the legislative hearings. I would say parenthetically that the underlying principle that this government is pursuing — or this motion is pursuing, I should say, to correct myself — is that there is still obviously a pre-eminent role played in our society by representative government. I wanted to say that at this point, because certain people have attributed to this type of movement something that is somehow trying to weaken representative government, and nothing could be further from the truth. I would put it to you that in actuality, something that will strengthen the political process, strengthen the democratic process, automatically strengthens representative democracy as well.

There is no question in my mind, as the mover of this motion, that for most of the issues confronting society today it will be through representatives of the Legislature that we debate and discuss those issues. There are, however, times when there is something to be gained from our society to have the wider electorate debate and discuss those issues directly — not just every four years or every five years at election time but directly on a particular issue.

I would call to members' attention the demographic facts that 200 years ago, when representative democracy was being formed in western civilization, to use an archaic term, the difference between the governed and the governors was quite astute — quite acute; it might have been astute as well but it was definitely acute in that the governors tended to be able to read and write and add and subtract and see beyond the fencepost of their property to what the wider world was doing and to have access to that information. Some 200 years later —

Mr Wildman: It's the opposite.

Mr Clement: At worst it's the opposite; at best, for legislators, we're at least an even par, so most of my constituents are able to read and write as well as I can, they can add and subtract as well as I can and they have, as has been recorded by numerous people — David Foot and others — access to as much information as I do. The access to information that is available in society now is the greatest it has ever been in the history of humankind.

A lot of those decisions that were normally accorded to representatives of the people can now be decided upon in certain cases, where it is appropriate, by the wider population, not every day, not every week, not every month, not every year but at times, when people have decided or where the government thinks it is appropriate — and that's an "or," not an "and" — that certain issues deserve to be put to the people. I wanted to say that in parentheses because that animates item 1, which we have already discussed, item 2 and item 3.

Item 2 relates to the discussion we had with the presenters at this committee over what sorts of issues perhaps should be mandated to go to referendum prior to the government of the day, or the Legislature of the day, to be more exact, being able to pass a law on a particular issue. We heard a number of comments from presenters. In particular, the two that came up the most were constitutional amendments and tax measures. Constitutional amendments, I would have to say there was a rough agreement by those who supported referendums as a

tool — so that is a subset of all the people we heard from, admittedly, but it was I would say the majority. Most of those persons we heard from said that constitutional amendments should be subject to approval of the people through referendum, and certainly part 2 of my motion acknowledges that.

The other issue is the issue of new taxes paid by Ontario taxpayers. There were some we heard from, some taxpayers' coalition groups, the Freedom Party of Ontario and Tax Equity Alliance to name a couple, who opined that would be another issue that should be subject to mandatory referendums. We also heard from the Canadian Taxpayers Federation, which indeed said this issue was of such importance that it should be part of a separate bill, rather than part of the referendum bill, which is a school of thought as well, that it be a separate item done through a separate bill rather than through a general umbrella piece of legislation. That is something worthy of consideration, certainly. Those issues were canvassed by this committee during the hearings and those were paid attention to in my motion.

1730

I guess the third issue that has come up today is the issue of casinos. I believe Mrs Papatello made specific reference to it. I would treat the casino question differently from the others in that probably it comes closer to a commitment by this government that at some point during our mandate — and this is how I understood Mr Harris's comments during the election — it would be appropriate for the government to consult with the people on the issue of further casinos.

That could be seen as a commitment by the leader of our party, who became leader in the government, and that is something that we will have to be accountable on as a governing party in the next election and certainly it may well be potentially the first item for referendum, if ever we get referendum legislation passed. But I would put it in a separate category.

I suppose one could argue that in that same category one could put the commitment of most of the candidates for office representing the Progressive Conservative Party to not invoke any new taxes that were not revenue-neutral prior to a referendum, but I guess instinctually, as the mover of the motion, I felt that was of a higher level of commitment to such an extent as to suggest that this was a commitment not only of this government but it was worthy of consideration for committing it as a matter of policy in the Legislature until the Legislature so chose to change that policy through amending a bill. So that is why that is in a different category from the casino.

I'm not trying to pre-empt my friend Mr Silipo, but I do understand the NDP position is very different from the government position on this, and I respect that. It all comes down to how one interprets a commitment made in the election period by candidates who sought to be members of a Progressive Conservative government.

It may well be that this may be a point where we could have addressed in the final report, Mr Chairman, not only the position of the caucus, but also the position of the New Democrats or the Liberals as alternative positions that could then go to the government to decide which position makes the most sense to be enshrined in first reading of whatever bill comes out.

Mr Wildman: I've got a pretty good idea of which one they'll choose.

Mr Clement: But I think it is worthy of discussion. Indeed, all of it is worthy of discussion. I'm not trying to suggest otherwise, but it is a question of interpretation and how one interprets a promise.

Although we can write pages of Hansard on that, I would request that members of the committee keep in mind that I'm trying to be as flexible as possible to acknowledge that there were different positions on this and perhaps both of those positions or all three positions, in the case of here where we have three parties represented, could be alternative positions in a final report that would at least animate whatever comes to the Legislature eventually.

That's what I have to say at this time.

Mrs Pupatello: This is of course of great interest to me, given my short time in the House so far. I apologize too to the member for Etobicoke-Rexdale. I understand he's fed up. I apologize that he's fed up. Unfortunately, we can't just pat me on the head and think I'm going to go away. Only the citizens of Windsor-Sandwich will determine when that's going to happen. So I'm sorry that you're fed up.

I do, however, want to say on the record again that while you have the opportunity to speak in this forum, I would appreciate your answering the questions that are very pertinent to the discussion of referenda. When I say that these are critical elements that the public must know, you just can't wash it. You just can't send it out in your jargon and hope that the people will accept it. That is exactly what I'm here for.

So I appreciate that you're fed up listening to the dissenting view, but what is critical is that you clearly answer the question for the public. In your discussion of item 2, when you would choose to have mandatory referenda, it's absolutely of no surprise to the Liberal caucus to see "involving new taxes" would be added there. That is your Reformer John O'Toole speaking very loud and clear.

But where the sleight of hand is for the general public is that in your short stay in government so far, and it hasn't quite been two years, you have introduced any number of new user fees, any number of new copayments, and yet those are the very things that are essentially new taxes.

My greatest fear with the way number 2 has been worded, and I imagine it will eventually pass by a majority government, is this will involve more sleight of hand should you indeed bring forward a referendum that deals with taxes, because you certainly won't ask the public if you can raise taxes, but you will be required in some instances to provide some level of support for your chosen friends, and in order to do that, you will be looking for revenue everywhere. You'll overturn every rock.

Clearly that's what's happening now, and where you've gone looking for it, in fact — and this is simply fact. It's not partisan. This is the case, and you know this is the case; you hear about it from your constituents where you come from. You've added drug user fees for seniors. That's where you have selected through your

Minister of Health to bring in more revenue for the government. You have not called that a new tax, but clearly that is more revenue for government. It's a tax. You called it a copayment. You refused to acknowledge it as a user fee. Well, who cares what you call it? At the end of the day, seniors must pay more for their drugs.

So when you say "involving new taxes," clearly I expect the member for Brampton South to take the time to give me a full and complete description of everything that could be included as a new tax. I expect to go through the record of this current Reformist-type government in Ontario. In the last year and a half or more, every time you have raised the price of something, introduced a new tax, you've called it a copayment; we've called it a user fee. That essentially is what it is.

The danger when you look for revenue in that manner is that it allows some of the residents of Ontario to access it because they have the power to do so and they have the wherewithal and the wealth. It doesn't allow many other Ontarians to do so because they simply do not have the wealth.

The member for Brampton South mentioned David Foot in his little discussion a short time ago. If you look at the work of David Foot, he clearly shows the difference in generations and what it is that different generations are looking for. That is the greatest fear, that the great divide between generations, depending on the size of each generation, will play a significant part in the outcome of referenda.

Now, is that a problem? Not necessarily, because even today people can walk and vote as they choose, so that certain age groups tend to vote for certain parties, for example. That is a very natural course that currently exists, but if we go back to why governments ever came to be in the first place, the reason that government became government in this fashion of democracy was to take care of those who weren't taking care of themselves for whatever reason that they couldn't or wouldn't. That's why governments do what they do. They are there to make things fair. That's the point of government. Government is here to be fair.

When I sit as a legislator in the House, I want government to be fair. So when they introduce user fees, new taxes, call them what you will, copayments, I insist that they be fair, that people have an ability to pay, that it doesn't become a class war in Ontario where the great divide between generations that already exists, and really always has, becomes greater and greater and greater.

If we simply look at the wealth of generations today, even wealth is becoming a divider, never mind age, and depending on the size of that group, the difference becomes even more so. We're just behind the US in terms of the number of baby-boomers we have in Canada today as a natural extension in Ontario. So in a couple of years we're going to have the most massive group of 50-year-olds in Ontario ever, in Canada ever. The Americans are there now. That is why we're seeing so many things happen in the US, where referenda are concerned, where the topics specifically show the great distinction between what one age group would like to see happen in government and what the other age group would like to see. You see young students fighting so their tuitions don't

increase. You see seniors fighting so that they get more and more pension, and they don't want to continue to fund education the same way.

1740

When we look at the changes that have happened in some of the states, New Jersey, California, the introduction of charter schools, was it any surprise to us that the member from Scarborough, Jim Brown, who should know more about education than he's letting on, was out at one of those thumping-type meetings, telling the people and the throng: "Go to your MPP. Fight for charter schools. This is the time. We're in the midst of change. Go to your local MPPs and ask them to change now. We want charter schools?"

That is a throwback to exactly what happened in California, exactly what is happening in a number of states in the US. So the great divide continues, not just between generations but between classes of wealth. That, my friends, is exactly why governments were always supposed to be there to be fair.

When I look at number 2, it flies in the face of why governments ever became what they were. It flies in the face of why governments make the decisions they do and who must pay for what. So there isn't any way that we could be supportive of this.

I gave you many, many examples of incidences where people had to make choices. Human behaviour has not changed over the centuries; it tends to be the same. They do continue — are you about to bang that gavel? Is that why you're picking that up? People do make choices, and they make them typically and traditionally in the same manner, so we can anticipate what kinds of choices they'll make when they're given referenda items.

I agree that we're in an age of information, that we've never had access to more, ever. I would submit, though, that in the very few examples that we have here in the House, there was an uproar, but it involved a very small constituency. I'll give you an example, Chair.

The government — Harris — decided not to make copies of Hansard available offsite and not to mail them out to people who wanted the subscriptions. Instead, they said it's available on the Internet. Well, the difficulty with Hansard being available — and it's available almost instantly, as we know; within the hour it's up on the screen — is that people need to have the computer, the phone line. They have to have the modem to hook up into it. They've got to pay the Internet services.

Now you have set the tone that a particular class of people — likely age, education level in terms of computer literacy and wealth to make Hansard available to the public. When the government —

Mr Clement: Point of order, Chair: Why are we discussing the availability of Hansard?

Mrs Papatello: Mr Chair, I'm sure you've followed along so closely that you saw the segue in terms of the discussion.

The Chair: I think it would be helpful to tie that back to your basic thesis relative to the point at hand.

Mrs Papatello: Thank you. The difficulty is that even in the example of what Harris has done with Hansard, to keep Hansard away from the general public, make it available in a very elitist form — Mr Chair, I don't know

if you have a computer at home. You probably do, but you probably do because you fit into the demographics of education, age, income, wealth, what you do for a living in terms of occupation, but that's a very narrow band. There are many, many people who simply don't fit into that category. Therefore, you have a computer; you probably have Internet at home. The bulk of my constituents in Windsor-Sandwich do not. That is a fact. The bulk of your constituents do not. Every home has a phone; we've arrived there, though that was not the case 50 years ago. Today we're not yet at the point where every home has a computer, let alone the Internet hookup so they can have instant access to Hansard.

The point I make is that the government already is making the kinds of decisions to be exclusive and to be elitist and to be readily available to only a certain group of people. If the excuse and the rationale is that the public can make decisions based on information, my friends, you need to access the information in order to see it and digest it and therefore make a decision.

It's critical, and it's a very specific example, but it's very telling in terms of where the government is today and who they want to see and hear their message, and it is frightening. While the Vice-Chair of this committee doesn't want me to impute motive, I am pummelled by example after example, buried under example after example of the Harris Conservative government trying to subjugate the process in the House, to not allow me to get in there and see everything and do everything.

If we look at number 2, mandatory referenda "involving new taxes paid," does that mean they can go ahead and double the user fees on drugs for seniors? That would be considered a copayment; that's how the Minister of Health put it across last time. In fact, that tells me the Conservative government could jack up the fees for drugs even if they brought in a referendum on taxes. Why? Because they didn't call it a new tax, though that in fact is what it is. They didn't call it a new tax, they called it a copayment. I've got to tell you, the seniors who live in Windsor-Sandwich went to the drugstore and paid a new tax on that drug; they didn't pay a copayment. What they turned over was green, and that's all that mattered at the end of the day.

That's another perfect and clear example of why I need to see a full and open discussion and definition of what the member for Brampton South considers a new tax. I view that as a sleight of hand. If it isn't, I need to have full explanation.

If the Vice-Chair of the committee is fed up — I would prefer that I receive the answers to the questions. We deserve to have them, quite frankly, and it does become a very large, philosophical discussion about the direction of a Reformist, Republican attitude of government. It's that ideology that was very prevalent and has become more so in certain of the states in the US and that I fear becomes more prevalent in certain parts of Canada. I reject that. Most of the people of Ontario reject that. I cannot sit by, regardless of whether other members are fed up — I don't mean to be offensive to the member. If you're fed up, that's fine. I, on the other hand, am highly active and highly prepared to wait around until I get the answers we require on this discussion paper.

To that end, I'm going to wait in hopes that under the discussion of number 2, the member for Brampton South will offer a full disclosure of the definition of new taxes very clearly, very unequivocally, because we have many, many examples where that simply has not been the case with the Conservative Harris government to date.

Mr Wildman: Mr Chair, I understand they will probably be voting in the House soon, so I'll try to be quick.

As Mr Clement indicated, we have some serious concerns about number 2, and I want to put them as clearly as I can.

I have before me a letter dated January 24, 1997, signed by Tony Clement, MPP, Brampton South, explaining positions regarding referenda, particularly related to the controversy around Bill 103. Under the attached information, number 4, Mr Clement says: "Just what would the question be? Referenda are suited to yes or no answers. The status quo is no longer an option." It goes on.

As to "referenda are suited to yes or no answers," I must say I have some serious difficulty with that as it relates to the Constitution of Canada. We saw with the Charlottetown accord and previously with Meech that proposals for comprehensive constitutional change don't easily accommodate themselves to yes or no answers.

If it were just one single, clear change in the Constitution, one clause in the fundamental law of Canada, I suppose you could have a yes or no answer; I'm not sure. But on a total package, a yes or no answer is not easy. As someone who has spent a lot of time over the years involved in discussions around constitutional matters — I have a personal interest in this, as I suspect many members of the House do — I find that a little disconcerting.

1750

I also am concerned about the position taken by the Minister of Municipal Affairs and Housing in this House. At one point he said that the matter facing Metropolitan Toronto, the amalgamation of the six cities into one, was too complex for a referendum. Frankly, it is beyond me how it could be that a change to the fundamental law of Canada would not be too complex for a yes or no in a referendum but the question of whether to amalgamate the cities of Metropolitan Toronto into one is. I don't ask that in a rhetorical manner. I don't understand it. The Constitution of Canada is a very, very complex matter and it is fundamental to our rights and freedoms and our system of government in this country. If it is acceptable for a yes or no answer, then how in God's name would the amalgamation of a bunch of municipalities be too complex? I have that very serious concern about number 2, on the Constitution.

On new taxes, I must say I'm in agreement with Ms Papatello in part of this discussion, on the question of user fees. It needs to be clear on user fees, and I won't go into a long discussion about that, but we have many fees charged to residents of Ontario. Ms Papatello has talked about the copayment for drugs, and there are many others: There are park fees, fees for licences, fees for all sorts of things that we charge to the residents of this province. I know that in the election, just as he painted himself as the Taxfighter, the current Premier also painted himself as someone who's opposed to user fees. So that needs to be clear.

But I want to get a more fundamental question about tax policy. In our responsible system of government, it is basic that the government is responsible for making tax decisions. Governments stand or fall on tax policy. If a government decides to lower a tax, raise a tax, bring in a new tax, that is a fundamental responsibility of the elected executive, the elected members of the House who become the executive, and their future as a government stands or falls on that policy. How can that then be abdicated to the general populace, to all the taxpayers, without fundamentally changing the relationship between government and tax policy, between government and taxpayers? The government may want to fundamentally change that relationship, but that has to be clear and explained.

Chair, you're looking at me as if we should be closing down. The vote is at 6 pm, I understand.

The Chair: We'll continue till 6 o'clock, unless the bells call us to the chamber.

Mr Wildman: Obviously, we want to be there for the vote.

The Chair: Yes, we all do.

Mr Wildman: Those are fundamental questions. I don't raise them as some sort of civics teacher or someone who's interested, for esoteric reasons, in political science discussion or philosophy, but because they are basic to our system of government.

I disagree somewhat with Ms Papatello's discussion of the history of government and how it developed. I think it is incumbent upon government to be fair and I think it is important for government to protect the more vulnerable in our society. But government basically, whether it's democratic government or another form of government, was established to enable societies to organize themselves in ways to implement decisions, good or bad.

Governments are established to make decisions, to implement those decisions and defend those decisions. They are judged, in a democratic society, on the basis of whether the populace accepts those decisions and the implementation. How is it that we are now proposing that in all questions of tax policy it would be mandatory for all the taxpayers to vote?

I understand that the government wants to do this or is proposing that this is something that should be implemented, but what does that do to the relationship between the government and the governed? Is this something that has been fully appreciated by the advocates of this change?

I must say that we have fundamental problems with number 2 in regard to the view that any change on the Constitution of Canada would require a mandatory referendum while at the same time an amalgamation of municipalities is considered too complex.

On the other side of it, the responsibility for tax policy is fundamental in our system of government. That was what 1837 was about. That's what led to the American Revolution, the view that those who are taxed must be able to judge those who impose taxes and that those who impose taxes are accountable to those who are taxed. Are we now saying that the taxed will become the people who decide tax? If that's what's being suggested here,

what does it do to the whole tradition of responsible government, both in the British parliamentary system and in the American congressional system?

I raise it as a very serious question that I hope we can deal with. If it can't be dealt with in a way satisfactory to allay my concerns on both these counts as well as the user fee issue, I'm afraid we will have to move an amendment to delete section 2 from the motion. I don't know what procedure you would like me to follow, Chair.

The Chair: We still have one additional member who wants to speak to this issue, but I take that as notice and I will recognize you before we move on.

Mr Hastings: Very briefly, Ms Papatello was asking what kinds of questions could be asked. One that came to my mind that certainly any future government is going to have to deal with sooner or later involves the whole issue of information technology and privacy and the role of the individual in terms of whether government has integrated data banks for health cards, that sort of thing. What kind of stuff would be on it and how would it be separated? I can see that as a very legitimate type of question that could be posed to the electorate in this province.

I'd also like to remark that when Ms Papatello mentioned that I was fed up with her not going away, that has nothing to do with it. I'm not fed up with dissent. I enjoy having a good, vigorous debate. What I am fed up with is the type of language being used in this committee, the sort of labelling: Republican, élitist etc. I don't think that brings anything to the debate. But since we seem to want to engage in that, I guess I would just add that we have here in this dialogue, if you can call it that, a group of Gliberals who are consistently inconsistent, opportunistic and as élitist as one can find. That's where I would like to end. Since we want to label, that certainly is the remark I'd make.

Mr Wildman: "My labels are better than your labels."

Mrs Papatello: Exactly. How totally irrelevant.

The Chair: Order. I'd like to recognize Mr Wildman at this time with his motion.

Mr Wildman: Mr Chair, I know we're running out of time, but if Mr Clement would like to respond, I'm willing to hear his arguments. If he cannot respond adequately, I will move a motion. I don't know how you want to deal with that.

The Chair: Mr Clement, do you care to respond at this time?

Mrs Papatello: Aren't you going through all the points, Chair? There was unanimous consent to do point by point.

The Chair: Yes.

Mrs Papatello: So you're going to go through the whole discussion and then have a motion at the end?

The Chair: It was the decision of the subcommittee that we move point by point through the motion and have one vote at the end. However, if someone wanted to indicate their dissent to a specific point, they can move a motion to delete that particular point to show their lack of consent to that point.

Mr Clement, do you wish to respond at this time? We're getting very close to 6 o'clock.

Mr Clement: I will try to respond very briefly, at least to have it on the record for my colleague to consider until next week.

I do not think constitutional issues are too complex to be dealt with through referenda. I think this country established a watermark with Charlottetown where the public showed a great deal of maturity in dealing with the issue. Perhaps people who are watching or reading Hansard might have been on different sides of the debate, but I felt that the debate itself reached a level of maturity which the politicians engaged in the debate did not reach, but certainly among the people the debate was mature.

Mr Wildman: Keep in mind that in Ontario it was voted for.

Mr Clement: Yes, it was, by a margin of 50,000, which I thought probably matched the people's will on that.

As to how that interplays with the argument respecting Bill 103, with the greatest respect to Mr Wildman, I think he is taking one of a series of arguments for why the government decided to do something and is interplaying it with the constitutional issue. We on the government side have many reasons why we believe that Bill 103 and its passage and the public hearings are the most appropriate way to proceed.

I'm willing to answer the rest of the questions later.

The Chair: It being past 6 of the clock, this committee stands adjourned until next Wednesday afternoon.

The committee adjourned at 1801.

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**In attendance / présents*

Clerk pro tem / Greffier par intérim: Mr Douglas Arnott

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



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Mercredi 5 février 1997

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

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Chair: Ted Arnott
Clerk: Lisa Freedman

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 5 February 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 5 février 1997

The committee met at 1539 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We're again meeting to discuss the issue of referendums.

We were in the midst of discussing a motion that was put to the committee by Mr Clement; members will recall that we were on point 2 when we last met. Mr Wildman, I believe, had indicated an interest in moving a motion. I assume Mr Silipo would be prepared to move that. Are all the members comfortable with moving on now from point 2? Has all the discussion taken place that members want to engage in on point 2? Mr Curling, did you have something you wanted to say?

Mr Alvin Curling (Scarborough North): When we were here last week, we discussed discretionary referenda. As you said, we are on number 2, mandatory referenda. In the meantime, I came across something that is extremely pertinent, as a matter of fact quite timely. I thought I would share this with the committee as we ponder and put our position —

Mrs Margaret Marland (Mississauga South): Excuse me. There's a fan or something working over here, so I'm wondering if we can turn the mikes up a little bit. For one thing, there's a big echo in this room and it's very hard to hear in the best of times. I didn't want to interrupt you, but I want to hear what you are saying.

Mr Curling: Thank you very much. I'll lift the voice a bit. I was just saying, for the member for Mississauga South, that I came across something that I think is quite pertinent as we deliberate on referenda and I thought I would share this with the committee. You are of course quite familiar with one of the prominent social thinkers of today, John Ralston Saul. He made some very pertinent comments in regard to referenda or plebiscites, as he called them. Let me just read some of the things I came across. He says:

"Referendum or plebiscite: Most commonly used to deform or destroy democracy, referenda casually offer a false choice — to accept a change proposed by those who have power or to refuse it. In other words, there is a single option, which is not a choice.

"They are often presented as a populist tool of direct democracy which translates into undermining representative democracy." Quite profound, actually, very much focused.

"They can indeed be tools of democracy, for example, if the citizens of a territory want to choose between belonging to one of two countries.

"Referenda were introduced as a political tool under the French Revolution, but they came into their own

under Napoleon." You remember him. "He used them to create something new — a populist dictatorship. Referenda resembled a democratic appeal to the people, without requiring the long-term complexities of elected representatives, daily politics and regular elections. Instead he combined his personal popularity with a highly focused appeal on a single subject." Sounds very familiar. "The result was that he could later claim the general support of the populace on any subject for undefined periods of time. In 1804, Napoleon used a referendum to become emperor, thus destroying democracy. Hitler did virtually the same thing in 1933 and again in 1934. In two referenda he got more power than an absolute monarch.

"Those who propose the question invariably argue that a yes vote will solve problems; a no vote will bring on the apocalypse. This was as true of Napoleon as it was of the Canadian government's constitutional referendum in 1992.

"All the efforts of those with the power to pose questions are concentrated on making the populace understand that they 'need' to vote yes. 'Necessity,' William Pitt once said, 'is the plea for infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.' And as André Malraux noted, 'The slave always says yes.'

"Even at its best, democracy is a cumbersome and often tiresome business. Nor is it surprising that the gradual conversion of political propaganda into an important profession — public relations — which runs together social, economic and political questions, should favour the Heroic referendum approach over the complex, multifaceted and slow process of electoral democracy. The result is that we are increasingly subjected to the Heroic view of government. Even legislative elections are being turned away from their normal mix of issues and personalities to the illusion that a single candidate's position on a single issue or a personality flaw is all-important. Single-issue lobbyists are as devoted to converting elections into referenda as public relations firms."

Mr Tony Clement (Brampton South): On a point of order, Mr Chair: Is there a standing order that prohibits members from reading at length from prepared texts?

The Vice-Chair (Mr John Hastings): Mr Clement, it says in the standing orders under 23(d), "In the opinion of the Speaker, refers at length to debates of the current session, or reads unnecessarily from verbatim reports of the legislative debates or any other document." It gives considerable latitude, it would appear.

Mr Clement: I would argue, Mr Chair, that this falls into the category of "or any other document." I would encourage you to encourage the member opposite to

confine his remarks to what he feels is pertinent and not to read at length. He can maybe cite the passage to us and we'd be happy to read up on it in our own time.

The Vice-Chair: How much longer —

Mr Curling: May I comment on this? First, I think it is not an unnecessary thing. The Chair has indicated that I can, and you say —

The Vice-Chair: No, no. Mr Curling, I asked you a question first. You went to speak to Mr Clement. All I wanted to ask you is, how much longer —

Mr Curling: Very short; as a matter of fact, another minute or two and it's all over.

The Vice-Chair: Okay. At the discretion of the Chair, we'll give you a couple of minutes. If you're not close to the conclusion, could you summarize if you're getting close?

Mr Curling: Why did you say it gives latitude, then?

The Vice-Chair: I'm trying to be flexible, but on the other hand, we had other situations, just before Christmas, similar experiences where people wanted to read from documents. I am prepared to make a ruling if we get into this sort of excessive situation, where you would read another document for 15 minutes. I'm not saying you will. Could we use some discretion here? Proceed, and hopefully in a couple of minutes you will have concluded, or nearly.

Mr Curling: I'll do my best. As a matter of fact, Mr Chair, what I had intended to do was to maybe read a paragraph —

The Vice-Chair: That's fine. Let's go.

Mr Curling: — and maybe give my view on it. I thought it would be more efficient to read the thing continuously, without reading each paragraph and then elaborating.

The Vice-Chair: Let's use your good discretion. Away you go.

Mr Curling: I'm explaining, Mr Chair.

The Vice-Chair: I'm watching the clock, so let's go.

Mr Curling: Are you watching the clock? This is my time to talk.

The Vice-Chair: But I'm getting — let's just get at it. If you want to read it, go ahead.

Mr Curling: Let me proceed, Mr Chair.

The Vice-Chair: Please.

Mr Curling: As I was saying, "Single-issue lobbyists are as devoted to converting elections into referenda as public relations firms." This is important.

"And the press quite easily fall into the plebiscite game plan, because they find it easier to harp on about the same subject, dramatizing, hyping it in fact, than to deal with a mix of complex issues.

"A new face. The reduction of debt. Immigration. Nationalization. Privatization. Free Trade. One of these is the answer to our problems. It will allow us to avoid the apocalypse. The choosing of hundreds of representatives in the context of hundreds of issues, big and small, is in this way reduced to a plebiscite. Referenda are thus anti-democratic because they lend themselves so easily to the politics of ideology."

My point is that sometimes the members of the NDP will want to accuse us, questioning whether we are for referenda or not. But in any debate looking at an issue, it

is important that we see both sides of it and don't just ram it through, blindly taking one position. That is why I felt it was important to hear from one of the top social thinkers what he feels about that. I read it into the record because I hope you'll have that to digest.

The danger is that sometimes one uses referenda or plebiscites in order to get one's way or position, or they're used as a convenience. That bothers me, because the whole story never comes out.

Whether they are discretionary or mandatory, we have to be very careful that when we do have referenda or a referendum, if there is one, the issues are debated openly and it's not reduced to a simple yes or no and there is no movement whatsoever; that the government does not use it to advance its own cause but to make sure that the people we serve understand the issue.

These days, the present government so often say things like: "It doesn't matter what the people say. We're going to just go ahead and do it anyhow. It doesn't matter if there is a referendum and the majority vote one way or the other. We know exactly what we're going to do."

I question whether one can trust that government to now sit down and debate referenda or plebiscites on the one hand, and at the same time they are carrying through legislation now that calls for people's input, which will call for a referendum by the people, and they say it doesn't matter one way or the other. I think that's what John Ralston Saul was saying here: We have to be very careful that these things are not used for our convenience. Those are my comments in that regard.

1550

The Vice-Chair: Thank you, Mr Curling. Mrs Marland, are you ready?

Mrs Marland: Yes, I am. Mr Chairman, just before I make the comments I want to make, I would like to ask a question of the Liberal caucus, the official opposition representatives. It's my understanding that their leader, Dalton McGuinty, has said publicly on the record, I think on Focus Ontario, that they are opposed to referenda. If that is the position, it would be nice for us to know that.

Mr Curling: Let me just say this to the member: We don't get marching orders from our leader to say yes or no, like you do in your party. He trusts that we can think independently and are thinking about the people all the time in this regard. Although the member for Mississauga South would like to indulge in political football now, to find out what my leader said and what her leader said, I won't be dragged into that. This is a committee where we will debate the issues as we see them, and when we're through we hope we'll bring the best legislation report forward to the House.

I also want to say to the member that if their minds are made up — I know many of their minds are made up over there already, or, if it's one mind they have, it is made up already — they should tell us so we would know exactly how to respond to you. But our mind is not fully made up as we go through these debates for every issue here. We will debate them as they come along.

Mrs Marland: That's a rather significant response in light of the fact that their leader — not another caucus member, but their leader, who I can only assume must

speak for the Liberal Party policy, the official opposition policy — has said they are not in favour of referenda.

Mr John Gerretsen (Kingston and The Islands): Is that a quote you have there, Mrs Marland?

Mrs Marland: I can get the transcript if you would like me to.

Mr Gerretsen: I'd love to see the transcript.

Mrs Marland: I'm sure you've discussed it in your caucus.

The reason I'm bringing this up, Mr Chair, is that it's obviously a total waste of time to go through a process in a committee when the leader of the party has said in response to a direct question, "We as the Liberals are not in favour of using referenda and we are opposed to referenda."

If the exercise is to fill out time of this Legislative Assembly committee by having the kind of exercise that I witnessed last week for the first time, after having sat on this committee for a long time, and obviously what we were launched into this afternoon as well, it's almost — I won't allow myself to use the word, but I think you can probably guess the kind of word I might like to use to describe that kind of participation. If we're truly all here with an open mind to discuss something and improve something and develop a report and ultimately a policy we can all support with shared amendments and other changes, that is a fair purpose for us.

But if last week's example and obviously the role being played by Mr Curling today is an example of, "Let's drag this out" for no productive reason, I think we all have far better uses for our time. The government is not using the power of their numbers on this committee, which they certainly could. I certainly experienced that a lot in opposition. I respect that government members in a majority have that power, and as an opposition member for 10 years I experienced both the Liberals and the NDP using that, which is their prerogative.

1600

Mr Gerretsen: You never did it, though.

Mrs Marland: Mr Gerretsen, I'm talking about the 10 years during which I was in opposition, with a Liberal and an NDP government. If you don't choose to hear what I'm saying, that's fine.

Mr Gerretsen: Oh, I'm listening carefully.

Mrs Marland: You asked me if I had never done that. The truth —

The Vice-Chair: It's a little hard to hear anything in here at the moment. Excuse me, Mrs Marland. You have the floor.

Mrs Marland: The answer is no, I had never done that. I was sitting in opposition. How could I do it? I did not sit with the majority members of a committee.

In any case, Mr Chair, I guess we have to take some direction from you about where we're going with this. If it is going to be a series of filibusters every week in terms of the debate, it's not very productive if, at the end, those who are filibustering are simply going to realize, of course, that they cannot sit in here and vote against a policy that's already been pronounced by their own leader.

The Vice-Chair: Mr Silipo?

Mr Tony Silipo (Dovercourt): I have to say that I continue to be puzzled by the strategy my Liberal col-

leagues have chosen to adopt on this, but that's their choice. I take what they say at face value, and if they want to continue debating every one of these points, that's their right, I suppose, within the rules allowed in this committee.

I can't for the life of me understand why they would not want, as we want — I'll be very clear about this — to get on with this and have the report go to the House and have the government continue to explain, once that happens, the inconsistency they're caught in, of wanting to draft a piece of legislation to guide referenda while at the same time being out there opposing the referenda process in Metropolitan Toronto.

I want to get on with it. We have been clear, I and Mr Wildman sitting here on behalf of our caucus, that we have had discussions with our caucus members on this. Although I know other members — not of this committee but of other committees — like to quote individual members of our caucus with respect to referenda, I can tell you unequivocally that when I speak at this committee or when Mr Wildman speaks at this committee on the issues addressed by the motion before us, we speak not only for ourselves but for our caucus. I want to carry on with that.

I believe we're supposed to be discussing item 2. I have an amendment, Mr Chair, the one Mr Wildman had given notice of, which was to delete item 2. I will speak briefly to that amendment if you will allow.

The Vice-Chair: Proceed.

Mr Silipo: As we've both put on the record on more than one occasion as we've gone through this discussion, we have said very clearly that we believe in the usefulness of referenda if they're used as part of the parliamentary process, in addition to the process. I won't belabour those points.

But we also believe fundamentally that whatever the new law looks like, it should not prescribe the issues upon which a referendum must be held. Based on the experience we've had so far on most issues affecting the Constitution, we probably think it would be wise to have referenda held on those issues. We don't believe it's necessary or appropriate to have that actually prescribed in the laws of the province.

Second, with respect to the issue of new taxes, the law saying that new taxes couldn't be imposed prior to a referendum, we again think that really is fundamentally contrary to the notion of parliamentary democracy. What taxation measures governments decide to implement is really at the heart of what the government is about, whether they are wanting to increase taxes, decrease taxes, change the variety of taxes, and that really needs to be, at the end of the day, at the heart of what each political party puts forward in terms of their position and proceeds with, gets elected, deals with, takes responsibility for, rather than getting into a pattern which we think would fundamentally change the nature of our process of democracy to one that says that before any particular tax could be implemented, a referendum has to be held on that issue.

For those reasons, we think it would be appropriate for this report to go forward indicating that we don't think it's appropriate for there to be mandatory referenda on

those two items or any others. Again, I could go on and even here indicate some of the contradiction that I think the government members would find themselves in if they insist on this being part of the report. They also said there should not be casinos implemented without referendum taking place, and yet they're prepared to now sacrifice that issue. So if that, why not some of the other points?

On the question of new taxes, what's a tax? I've seen descriptions of taxes that would clearly say that user fees are taxes. Are we to understand, if this were to go forward, that the imposition of new user fees would not be possible without a referendum first having taken place? If that were the case, then I would say to the government members that they've already contravened that very notion, because there has been many a user fee. I'm not even talking about the ones that municipalities are having to put forward, or school boards or other bodies at the local level. I'm talking about direct user fees that the government has made decisions on through its power of regulation. So I think again the government members are caught on that one.

The most logical way to deal with this would be to delete item 2 and stay somewhat more consistent with the approach. So my motion is to simply delete item 2 — my amendment, rather, to the motion in front of us.

Mr Gerretsen: I wanted to address some of the issues that were addressed earlier as to what exactly the policy of our leader was with respect to referendum. I would just simply say that it is almost impossible on an issue like this to make a categorical statement either one way or another.

I don't know what the government's position on referendum is either, quite frankly, because the Minister of Municipal Affairs has quite clearly stated in the House that he doesn't care what the citizens of Metro Toronto decide in their referendum on March 3 or 4 or whenever it is; he's not going to adhere to it either. They're wasting their time in holding the referendum. I would say that this applies, exactly the same thing, to our own situation as well. The issue with respect to that particular referendum in Metro Toronto, though, deals with whether or not we, as an elected body, allow other elected bodies, local municipal governments, to hold referendum, and on that issue, let there be no mistake about it: We clearly recognize the fact that any local municipality or a local group of citizens that wants to hold a referendum has the right to do so. That is a position that our leader and our party have consistently taken in that debate.

Quite frankly, whether or not we're in favour of referendum depends on what the issue is. It depends on what kinds of restrictions you put on that and, in that regard, I totally agree with the amendment that has just been made in the deletion of item 2 on this list.

I don't know why any government would want to tie its hands by the need of going to the general public every time it wanted to introduce a new tax, and I don't really know what you mean by a "new tax" in the context of item 2. Do you mean any increase in an existing tax as well? Is that a new tax?

I think it would be rather ridiculous that every time there's a change made in a tax or in a user fee, even a minimal user fee, you in effect spend more money in

going to the electorate of the province to determine whether or not they would like it.

I truly believe the people of Ontario have elected us to do a job. They may not like what we're doing. They may not like what any particular government is doing at any one given time, and those people have an opportunity four or five years later to make their views known on that. But to bind the hands of any government or of a Legislature that every time it wanted to make a move it would have to go back to the people of Ontario, I would say that this present government, certainly in its actions over the last year and a half, in many respects would have had the requirement to have many, many new referendums called on those issues, particularly if you interpret a "new tax" to mean a user fee as well, as has just been indicated by Mr Silipo.

1610

Quite frankly, the issue here is not at this stage whether we are for or against referendum. It's what the government feels about referendum. You hold the majority on this committee. You hold the majority in the Legislature. I'm sure the people of Ontario are much more interested in how you feel about this particular thing, because you can actually implement whatever you stand for in this regard. So it's your policies that are at issue here, not so much the policies of the opposition parties at this stage. We can debate that during the next election.

I suppose one could say that when Mr Mulroney introduced the GST in 1991 or 1992, according to your criteria he should have held referenda on that as well. I wonder how you feel about that particular issue.

I'll make it as short as I can. I'm not a man of many words, particularly on an issue like this. I cannot for the life of me support, nor can my caucus, item 2 on this list. I think in effect you'll be tying the hands of any government that may be in power at any one given time.

Mr Clement: I'd be happy to speak to Mr Silipo's motion to delete. Let me say at the outset that Mr Silipo's point of view is a legitimate point of view which I would recommend to this committee. It would be appropriate, I think, in this particular case to both have a point of view as expressed in item 2 and Mr Silipo's point of view as an alternative point of view as part of the final report. The final report can indicate that there was not unanimity on this particular issue and that there are points of view for Mr Silipo's point of view and there are points of view that are obviously different.

Let me just try to articulate why item 2 is there so that both points of view are on the table. The members opposite talk about binding the Legislature of Ontario. In effect, legislatures bind themselves on a number of issues in the course of their deliberations, and by setting that threshold, obviously a future government would have to delegislate in order to unbind itself from previous decisions. That's in the matter of course that occurs in this Legislature frequently, at least with this government. As a result, it is not unusual to have a Legislature that feels itself bound by previous laws or regulations and that wishes to unbind itself. I don't think there's anything out of the ordinary in a piece of legislation seeking, through a matter of public policy, binding the Legislature.

The fact of the matter is that previous taxes imposed by previous governments have bound the taxpayers and the people of Ontario. They are forced to pay those taxes or they would be in contravention of the law. So in that respect, we are in a bound situation as it is. This section merely states that if you're going to bind not only the government of Ontario but its citizens, the citizens should have a say. That I don't think is particularly revolutionary; it follows as a matter of course.

As the honourable members opposite know, there was a point in the campaign where members of the campaign team of Mike Harris felt that this was a principle important enough to sign a pledge with the Taxpayers Coalition which said that any new taxes we would first put to referendum. Our leader made it clear that we intended to restructure the tax system in Ontario, so that we were looking at tax increases that were not revenue-neutral, so that sometimes in a budget one tax may go down or in a rearrangement of tax priorities one tax might go down, another tax might go up, but if it's revenue-neutral, that should be taken into consideration as well.

Mr Gerretsen's definition of taxes is a bit broader than my definition of taxes. I think everyone distinguishes between user fees and taxes. User fees are on a user-pay basis. Taxes are exigible to the government on the basis of either income or some other means. So there's a big difference between paying my \$5 at Brampton Arena so that my kids can skate for an hour and my income taxes and my sales taxes, a very large difference, and that is identified in Ontario law and in Canadian law. So I would encourage members opposite to take that into consideration. We were talking about taxes; we weren't talking about user fees.

In so far as the Constitution of Canada is concerned, I would hope we have progressed and matured in this nation to the extent that we now consider it an obligation of government to consult the people before any meaningful constitutional change takes place. That is the norm in a number of other countries.

We saw with the accession to the Maastricht treaty in Europe a number of countries, the Danes, the Swedes, the Norwegians, the Swiss, who wanted to — a group of Swiss wanted to adhere to the European Economic Area, which is a substation from the European Community, and they had a referendum on that, but also the Danes and the Swedes and even the French had a referendum on this issue, because the Maastricht treaty involved constitutional issues. Our Australian cousins are now talking about a referendum on whether to continue to adhere to the monarch as the head of state, and I think that's entirely appropriate. That's an entirely appropriate means to decide that issue in Australia.

It seems to me that the force of history has been, and I think quite rightly so from a public policy point of view, that the Constitution which binds all citizens should also gain the agreement of all citizens before it is changed or altered in any particular way.

So one sees the common thread in this particular motion. When things bind citizens either economically or politically to such an extent as to affect their welfare to a large degree, I believe there is a need for the government to feel that it must have a mandate in order to

proceed. That is the essence of this resolution. Mr Silipo has another point of view, and I would like that point of view to be expressed in the final report, but I would like both points of view to be expressed, which is why I cannot support his motion to delete.

The Vice-Chair: Further discussion?

Mr Gilles E. Morin (Carleton East): The word "tax," to me, Mr Clement, is very simple. Anything that comes out of my pocket because of a government decision, to me, is a tax. Call it user fees, call it a tax — it's a tax. It's money that I don't have to spend any more. That's what it means.

I'd like to ask you a question. Is it your intention to have these 12 commandments, if I can refer to that, chiselled in the report regardless of whatever we say? Is that your intention?

Mr Clement: The answer is quite obviously no. I've just said —

Mr Morin: No. What you've said, Mr Clement, is that you will accept this motion —

Mr Clement: Mr Morin, please permit me to respond to your question.

Mr Morin: Sure. Go ahead.

Mr Clement: The answer is no. What I am suggesting in the case of Mr Silipo's motion is that there is a legitimate disagreement on this committee. The best way to handle it so that all points of view are expressed in the final report, and I'm trying to be inclusive here, is that we can have both points of view in the final report. Certainly that way we are not trying to silence Mr Silipo's point of view on this. I think that if reasonable people can differ, let's put it all on paper and consequently we can debate it on another day when the legislation comes forward.

The Vice-Chair: Anything more, Monsieur Morin?

Mr Morin: No. What's the point?

The Vice-Chair: Mr Silipo?

Mr Silipo: Thank you, Mr Chair. I don't have anything more to add. If my amendment is defeated, we will deal, I guess, in terms of what we do then, with how we express the two opposing views. But that's fine.

The Vice-Chair: I would imagine that if it is defeated, we would move to have it incorporated into the report.

Mr Silipo: Yes. I think Mr Clement has made that clear, so that's fine.

1620

Mr Gerretsen: Just a very minor point. Mr Clement made reference to changes in the Constitution of Canada. I would suggest that if there are to be any changes in the Constitution of Canada, then surely it's up to the federal government to decide whether the issue is sufficiently important to have a referendum or not. We've had two of those situations already; at least one, the Charlottetown accord. That was not a provincial decision that was made at the time as to whether or not there should be a national referendum, it was made by the national government, and I think it ought to stay that way.

Mr R. Gary Stewart (Peterborough): Just a comment: I can appreciate that the opposition Liberals don't wish the new taxes to be included in this, the fact being that over the last 10 years we'd have had 65 referendums, which tends to be a little bit costly to the taxpayers of this province.

When I listened to what Mr Clement is suggesting, that possibly it could be described two different ways, whether in support of Mr Silipo's amendment as well as the possibility of including the mandatory referendum, I believe what it does give is the flexibility to future governments to decide which way they want to go. I think that may offset his concerns one way or another.

For those who may know about it, I believe it's Switzerland that has TELs in operation. TELs are Tax and Expenditure Limitations. What they do, when the new government goes in, if they wish to have major expenditures either by taxes or whatever, they then go back to the people. I emphasize the word "major," and I think, again, the suggestion of the two interpretations, either mandatory or what Mr Silipo was saying, gives the flexibility to future governments to do this.

It gets around the point of, if there are major tax increases, which there have been in the past, the taxpayers of this province have the opportunity to respond to it without something being forced upon them. I guess what it also does is add credibility to the government of the day on how it sees the operation, both in taxation and expenditures of the government of the day.

I certainly would support the thought of having both included in this document.

Mr Gerretsen: First of all, I hope that one of these days — I'm not sure, it will probably be around the year 2000 — we're finally not going to talk any more about what happened 10 years ago or 15 years ago because, quite frankly, I'm not interested in what happened then. I think the economic circumstances of this province were totally different, life was totally different, and I don't think the citizens of Ontario are interested in what happened in the past as to who raised taxes or what have you. We're more interested in what happens in the future.

The problem with saying, "Only if there are major new taxes," you know what the debate is going to be the first time that something like that happens. No matter which government is in power or which party is in power, there is going to be a debate about whether the particular tax is, in effect, major or not. Obviously, the government at that point in time is going to say, "No, it's only a minor thing and that's why we don't go to the people by way of a referendum because we, after all, were elected to do...." As you people have said so often over the past year and a half, you were elected to follow a certain course of action and you're doing it. That's what the mandate of June 8, 1995, was, and you're doing it; it's not a major tax increase and therefore there's no referendum. The opposition parties, no matter who they are, will say at that point in time, "No, it's not a minor tax you're trying to implement, it's a major tax."

The moment you bring in very subjective terms that can be interpreted in different ways, you're not really solving anything. Any governing party with a majority at that point in time is going to interpret it according to its own wishes and desires. You know, we're all big boys and girls here. Let's at least acknowledge that. Let's not play games with that. The fewer subjective terms you have in this kind of document, in my opinion, the better the ultimate document is going to be and the less it's going to be subject to all sorts of interpretations afterwards.

Mr Stewart: Due to the fact that there has been an amendment come forth and there is some concern, I think probably on both sides, of where it fits into this and how it should be introduced, I would request a 10-minute recess.

The Vice-Chair: I'm prepared to grant that, but here's a suggestion for you for not even having the 10-minute break, although I'm more than happy to do it.

Mr Silipo has offered an amendment which specifically says that item number 2, mandatory referenda, not be adopted. Would that be fair wording, Mr Silipo?

Mr Silipo: I think the clerk has the wording.

The Vice-Chair: You can have a vote on it. After whatever happens to it, let's say it's not passed, then we can make a note to our legislative researcher that in the report in terms of the discussion of this item that Mr Silipo or the NDP had made their views known regarding item 2 and that it would reflect another interpretation or viewpoint from the one Mr Clement has offered so that it would be included in that context. That's one way it could be handled, but if you still want your 10-minute break, we can certainly accommodate you.

Mrs Marland: We don't have the motion in front of us and if it's just that it not be adopted —

Mr Clement: That is the motion.

The Vice-Chair: That's the government motion, Mrs Marland.

Mr Silipo: Just delete number 2.

The Vice-Chair: Do you want to hear the clerk read it out?

Mrs Marland: Personally, I would like the 10-minute recess.

The Vice-Chair: No problem.

Mr Stewart: Mr Chairman, I've asked for it and I would continue on. This is too important an issue to just accept either an amendment one way or another. So I would still request that.

The Vice-Chair: I declare a 10-minute recess. We'll be back here at 20 to 5 sharp.

The committee recessed from 1627 to 1637.

The Vice-Chair: Mr Stewart, you were speaking last. Are you finished?

Mr Stewart: Yes, I'm finished.

Mrs Marland: One thing I would like to suggest to the committee members — and we actually have a motion on the floor right now so it would be after we have dealt with that motion. To expedite this process, I would like to ask the honourable members on both sides of this room to identify which of these 12 clauses to this motion they have concern with so we can go to them. I think last week, when I spoke briefly with Mr Silipo, he did identify another one — I've forgotten which one it is — when we were talking informally, not on the record.

I think, because we are busy people and because of the demands right now for members on other committees that are being held concurrently with this committee, we could utilize our time more productively if, after this motion is dispensed with, we go to what the other areas of concern are and deal with them and then we can move the whole motion. Would that be agreeable?

Mr Gerretsen: I don't see what the difference is, quite frankly, Mr Chair. If we go through it clause by clause,

you'll find out early enough which ones we're in favour of and which ones we're not.

Mrs Marland: To identify why I'm saying this, and to be perfectly blunt, Mr Gerretsen, we've had this — I'm new on this committee and I've had this two weeks.

Mr Gerretsen: So am I.

Mrs Marland: It doesn't take me two weeks to read one page of text. I know now, reading it, whether I have any questions, and I'm sure from the official opposition and from the third party. As I say, Mr Silipo already came last week with his two areas that he mentioned and maybe this week he has something else, but the point is, why waste time going through something that's in print before us if you can read it and decide, "I don't have any questions until I get down to 8," or "I don't have any questions until I get down to 9"? There isn't any requirement, when a motion is written like this, for us to go through items 1 to 12, one by one by one, because we're not voting on it as single clauses; we are going to vote on the whole motion. But if your goal is to prolong something and filibuster, sure, you'd want to go through it clause by clause by clause. I'm just asking for a little productive cooperation of the committee members to get on with this job we have.

Mr Gerretsen: This is the second time this afternoon that this particular member has ascribed motives to the position that some of us have taken on this committee. I think that's out of order and out of line. You can have your own opinion as to what's going on, but to actually publicly ascribe those motives to other members of this committee I think is improper and is not in order.

Mr Silipo: I think I understand what Mrs Marland is suggesting or trying to do. I don't particularly have any trouble with going that route but it can only work if everybody's agreeable. I think, likewise, we can get through this if we want to get through this, because as we keep going through this item by item — I have an amendment on the next item, but on 4 and 5 I'll be able to tell you, "I agree, period; let's get on to the next ones," so they don't necessarily have to take a long time if there's a will to keep going through them and resolve where we are on them.

The Vice-Chair: In that spirit, then, can we move to your amendment?

Mr Silipo: Let's vote on it.

The Vice-Chair: I'll have the clerk put the amendment now. Would you read it out.

Clerk Pro Tem (Mr Doug Arnott): Mr Silipo moved that the motion be amended by deleting item 2.

Mr Gerretsen: Recorded vote.

Ayes

Gerretsen, Morin, Silipo.

Nays

Boushy, Clement, Grimmett, Ron Johnson, Marland, Stewart.

The Vice-Chair: I declare the motion lost.

Mr Clement: Mr Chair, I'd like the record of this committee to show that although Mr Silipo's amendment failed, we would be amenable to the reasoning behind his

amendment being part of the final report. Obviously, it's a minority view but I think it is quite legitimate to have that view represented in the final report.

The Vice-Chair: So noted by legislative research.

Mr Silipo: We'll see if you like the draft.

The Vice-Chair: Item 3, Mr Silipo.

Mr Silipo: I have an amendment and I have written it out for the clerk so I can give you that. If I just read the words they may not make sense, so let me give you a brief word of explanation. First of all, I want to say that on the thrust of item 3, I think I've stated before, and I will just briefly again state for the record, that we are agreeable to that and I think the fact that the threshold is now categorized as 10% of citizens is useful.

My amendment is not to change the significance of number 3 but to make it consistent with what I believe we agreed to earlier on. If you remember, when we were talking about the opening words of this motion at the beginning of this discussion, I asked and was given answers that indicated that when we talk about the holding of provincial referenda on any topic within the jurisdiction of the Ontario Legislature, that could encompass both referendums that would apply province-wide, where the issue applies across the province, as well as referendums that would only apply to one region of the province, where the jurisdiction rested with the province rather than a regional or municipal government, but the issue applied only to a particular province. I used the amalgamation within Metropolitan Toronto as one clear, ongoing, live example.

It seems to me that to be consistent with that, what we should have is a provision that says that where the issue applies province-wide, then obviously you want the threshold of the not less than 10% of citizens on the petition to apply province-wide. That's only sensible. But where the issue applies only to a particular region of the province, it seems to me only logical that the threshold should only apply to that particular region, and that's what my amendment seeks to do.

For example, let's assume that Bill 103 was not in existence and you were dealing with the issue of amalgamation within Metropolitan Toronto. Then it would seem to me, if this were the law, what you would want to do is to have the framework set up in such a way that it would require 10% of the citizens within Metropolitan Toronto to make a request for a referendum for whatever the request would be. That's what the words I'm going to move in amendment would do.

I think the easiest and clearest way to do that would be by inserting in the last line of number 3, just after the word "Ontario," and before the word "such," the following words:

"Where the issue applies province-wide, or of not less than 10% of the citizens of the relevant region of the province where the issue applies only to that region of the province."

The Vice-Chair: Would you like to get that — we could get it printed up.

Mr Silipo: I'm sorry, I just have it handwritten.

The Vice-Chair: We'll get it printed it up for you.

Mr Clement: I think I understand the essence of the motion and would speak to it on the basis of Mr Silipo's comments on it.

I think there are a couple of responses to this. First, the motion that Mr Silipo has presented was not recommended by any of the deputants as far as I — I know it was in September and a long time ago now, but I think I recall fairly clearly and I have reviewed my notes incessantly on this, and I don't recall any of the deputations suggesting this particular point of view. Maybe it just came up because of the recent vigorous debate we're having on Bill 103.

The second point is that this really is outside of the context in which we find ourselves, to use Bill 103 as the example on the table. We don't have only the MPPs in 416 in the Ontario Legislature voting on Bill 103 and there's a reason for that. The reason is because Bill 103 and the future success of Toronto is an issue for all of us. I admit I live in Brampton but I grew up for a good part of my life in Toronto, my wife works in Toronto and I suppose I work in Toronto for part of the time. I have as much stake in the future success and the future structure of Toronto — well, almost as much — as someone who pays taxes here.

Certainly, because of the way our services are delivered, and those services include Metropolitan Toronto, I, as an Ontario taxpayer, also have a stake in Toronto. We're going to be paying 50% of the social services costs if the proposal goes through, and a lot of those costs go into Toronto, and Toronto deserves to have 50% of those costs paid for by all the taxpayers in Ontario.

My point is that is why in our Ontario Legislature and our principle of democracy, we don't just have the MPPs in 416 deciding this issue. It is all 129, or 128 excluding the Speaker, MPPs who will be deciding upon this issue. I would like to see a similar principle, which I think is an important principle, for pieces of provincial legislation to also be the principle for citizens' initiatives.

1650

I have tried to recognize, in part 5 of my motion, that there are issues which are under the jurisdiction of the municipalities which of course would have thresholds that would match the municipal boundaries and the voters in those municipalities, those issues which are just in that jurisdiction of that particular municipality. I've tried to allow for —

The Vice-Chair: Excuse me, Mr Clement. Mr Silipo has to leave for 10 minutes.

Mr Silipo: I apologize, Mr Chair.

Mr Clement: I'm quite prepared to wrap up right now, and to conclude my remarks —

Mr Silipo: I'd like to reply, but I wonder if procedurally we can deal with this either by if you want to recess for 10 minutes or if you want to carry on with other items.

The Vice-Chair: I'm in the hands of the committee.

Mr Silipo: Let me come back at this when we get back to it.

The Vice-Chair: What's your pleasure, folks?

Mr Clement: Why don't we defer item 3 and move on to item 4 until Mr Silipo returns?

Mr Silipo: I'm fine with that. I have comments on some other items as we go on, but I can catch up.

The Vice-Chair: Is that all right with you, Mr Gerretsen? We go with item 4?

Mr Gerretsen: Carry on. Sure.

The Vice-Chair: Then we'll come back to 3.

Mrs Marland: A quorum doesn't require all parties, but out of courtesy, I don't think I would like to —

Mr Clement: Mr Silipo has already mentioned that he agrees with 4 and 5.

Mrs Marland: Okay, why don't we move on to 6 then?

Mr Gerretsen: Maybe I've got some comments on 4 and 5.

Mrs Marland: Okay.

Mr Gerretsen: Having recently been sucked into the committee and being fully knowledgeable about what's going on here, I'll —

Mrs Marland: I remember those days.

The Vice-Chair: Mr Gerretsen, item 4.

Mr Gerretsen: I don't have any objection to this item, but I would just like to get some clarification on the gathering of signatures for profit. Are we talking about organizations that may be hired by a citizen group to in effect conduct a drive to get signatures on a particular petition? I'd just like your comment. I'm not taking a position on it, but it seems to me that it should almost be irrelevant as to the manner in which signatures on a petition are obtained.

Interjection.

Mr Gerretsen: I'm sorry. I don't think Hansard could quite pick that up. There's a motion of you are trying to put your hands around my neck. Is that what you're trying to do, Ms Marland? No?

Mrs Marland: No.

Mr Gerretsen: You don't want to gag me, is that it?

Mrs Marland: No. Since you put that on the record, obviously, if somebody was being paid \$5,000 a name, they could be pretty persuasive in getting another name on the petition. Hence, my putting my own hands around my own throat as a demonstration of how people might persuade signatories to a petition.

Mr Gerretsen: I feel a lot better now, let me tell you, than I did 30 seconds ago.

The Vice-Chair: If you don't know this, Mrs Marland, Mr Gerretsen has the floor.

Mrs Marland: I'll try not to raise —

Mr Gerretsen: No, I'm actually glad she made that interjection because I feel a lot better now than I did about a minute or so ago, because I really felt outnumbered at that point in time.

I wonder if Mr Clement could just make a comment on that. If there is a group that, let's say, wants to retain an organization, not to get signatures by X number of dollars for each signature but just to sort of set up a booth somewhere for a three- or four-day period, and irrespective of how many names they collect the group's being paid X number of dollars to actually take up those petitions, that would include that kind of situation as well, I take it.

Mr Clement: The situation which animated this subsection of the main motion was based on the deputations and some of the descriptions that we heard at committee in the month of September where a number of deputants referred to the situation in California where there is a multimillion-dollar industry centred around \$1

a name, that sort of industry, and it is an industry in California with respect to their propositions.

It seemed to be certainly the overwhelming majority of the deputants we heard felt that this was not an appropriate industry, that when we're dealing with the democratic process — obviously money is involved in the democratic process; we all know that in terms of funding of campaigns and what have you — this particular item would not be helpful in terms of moving along a genuine public policy debate.

I must say that I personally was persuaded by that and would not like to see that. Let me put it this way: Just as we prohibit people in elections being allowed to pay people to vote in a certain way — that is a prohibition in the Election Act — similarly this would I think fall into that category of being an undesirable element of our democracy.

Mr Gerretsen: As long as we're not trying to tell citizen groups how to run their business in collecting signatures. It may very well be that the citizen group may want to hire one or two people to coordinate certain activities relating to the signature drive that they may get paid for, but the amount of money they get for the coordination has nothing to do with the number of signatures they collect. As long as we're not trying to limit that kind of citizen participation; that's all I'm saying.

Mr Clement: For the record and for the final report, we have in our province people who get paid to mount campaigns in provincial elections and who presumably when they are successful in getting out the vote and what have you — generally, I'm talking about, in a macro way — they are paid for a successful campaign. That's all part of the process.

Mr Gerretsen: Since we don't have a Senate to appoint them to.

Mr Clement: You have a Senate, actually. Your party has a Senate, not us.

Mr Gerretsen: We don't have a Senate.

Mr Clement: No, so obviously, remuneration for work that is being done in general elections is part of our political landscape. However, this motion does not speak to that. It speaks to a per capita gathering of names which would be similar to the prohibition of the per capita gathering of votes. You're paying someone \$5 for a vote. Maybe the cost has gone up, I don't know, but I've heard stories about this in other provinces. I haven't heard stories about this in Ontario, where we seem to be relatively clean of this, but in any event, it would work in a similar way.

The Vice-Chair: Any further debate? All right, can I have a motion to move item 4.

Mr Clement: On a point of order, Mr Chair: We're just moving a main motion; there are no subsets.

The Vice-Chair: Okay. That's only where we have the amendments. Then let's proceed to number 5. Concerns?

Mr Gerretsen: Again, a question. I noted a dozen or so years ago it was quite popular for local municipalities to declare themselves nuclear-free zones and things along those lines. I think it's fair to say that it was a statement of intent by the local municipality as to how they felt about a particular issue, but it's also fair to say that they

really couldn't control this in one way or another because they really didn't have any control over the nuclear industry as such.

I take it that what's envisioned in clause 5 here is that those kind of referendum — and there were actually suggestions made in some municipalities that some of these notions or ideas be put out for a referendum at the time of municipal elections — would not be allowed under this legislation.

Mr Clement: If I can respond to that, municipalities, under Bill 86 and indeed prior to Bill 86, have the ability to hold plebiscites on any issue they so choose. If they wanted to take a public opinion poll or a non-binding plebiscite, they were perfectly at liberty to do so, and indeed did so. Mr Gerretsen might recall that there was a push in 1982 or so to have hundreds of municipalities pass, through plebiscites, anti-nuclear declarations, which the anti-nuclear network wanted to string together to illustrate that Canada was a nuclear-free zone etc, all of which was very interesting, but, as you rightly put it, it was not up to the municipalities to enforce that. They had no power to enforce. They had the power to take the public opinion pulse of the people in their jurisdiction and they continue to have that power.

Item 5, however, deals with binding referendums, and with binding referendums, I make it clear that it's regarding issues within their powers. What I meant by that, and certainly I hope the record shows this, "within their jurisdiction" is included as within their powers, so that if they do not have jurisdiction over an issue, they can hold a plebiscite on that issue. They are perfectly at liberty to do so, and as a matter of common sense I would encourage them to do so. But in terms of binding referendums, they would have to stick to issues within their jurisdictions.

Mr Gerretsen: Where does it say that this is a binding referendum?

1700

Mr Clement: The member might want to read some of the depositions that we had before this committee. The committee heard from experts such as Patrick Boyer and others who drew a very clear distinction between plebiscites and referendums. The term "referenda" here refers to binding referendums. Plebiscites are non-binding referendums.

Mr Gerretsen: I'm fully familiar with that. You're saying then that in this resolution, every time we refer to the word "referenda," we're talking about a binding proposition, and it's only non-binding if you say "discretionary referenda." Is that correct?

Mr Clement: No. Again, these terminologies are found both in Your Ontario, Your Choice and in the Issues and Options paper that was done by the researcher. "Discretionary referenda" refers to referendums that are put before the people at the discretion of the government or the Legislature of the day.

Mr Gerretsen: Right.

Mr Clement: The issue of binding or non-binding is not taken up here. The issue is, under what circumstances will binding referendums occur and under what umbrella legislation would they occur? I would refer Mr Gerretsen to item 8 of my motion, which indicates what I mean by "binding."

The committee heard a number of constitutional lawyers and experts say that you cannot bind the crown, and in fact there are constitutional cases from the Supreme Court of Canada on down saying that you cannot bind the Lieutenant Governor by any referendum legislation. Then the issue becomes, how are we going to bind it? My proposal before this committee is that a referendum which is passed, that meets all of these criteria, would then become a government bill. That's the best that you can do in our parliamentary system.

Mr Gerretsen: But that's as far as it goes. In other words, if the government doesn't proceed with the bill after first, or in some cases second, reading, that would be the end of the exercise anyway. How would that deal with the municipal situation where you don't have the same kind of introduction of bills etc as we have here provincially?

Mr Clement: Mr Chairman, I'm quite willing to take his recommendations on how best to make a municipal referendum binding. Certainly if we could come up with some wording that would do so that we can include in our final report, I would love his comments on that.

Mr Gerretsen: I'm not suggesting that they be binding at all. As I've stated before on the megacity issue, I think we should be supportive of allowing local municipalities to have a referendum on any topic that they see fit. As to the use that the local municipality wants to make with respect to the results of the referendum, that ought to be left to the local municipality.

What you're suggesting in this particular case is that the local municipality in effect be bound by whatever results come out of that referendum, and I'm not sure whether I agree with that.

Mr Clement: Last week, Mr Gerretsen, your caucus said that the only case where they wanted binding referendums was in the case of municipal referendums. So I'm a bit perplexed as to what the position of your caucus is, I must say.

Mr Gerretsen: I would have to review the record on that to see whether or not I agree with your interpretation.

Mr Clement: That's fair.

The Vice-Chair: Any further debate? With the indulgence of the committee, I'd like to ask Mr Clement a question, and this is done not to impinge on the neutrality of the Chair.

Regarding 5, near the end it says, "receive a citizen's petition regarding issues within its powers" — that is the municipality — "upon the same thresholds and terms." Would there have to be any interfacing or linking with the Municipal Act? Where there are referenda allowed, when they're initiated by a council, would there have to be a change in the Municipal Act or would a proposed referenda bill override the Municipal Act?

Mr Clement: That's a very good question, Mr Chairman. I think if the government were serious about allowing this option to occur, there would either have to be concomitant changes to the Municipal Act or there would have to be a very clear clause in whatever referendum bill is proposed to the Legislature making it clear that it takes precedence over any prohibitions or other terms that are found in the Municipal Act. Quite so.

The Vice-Chair: Thank you for your indulgence in that. Any other debate on this item? Let's move then to item 6.

Mr Clement: Perhaps I can just lead off. Maybe that would help Mr Gerretsen and my colleagues to understand the nature of this one.

I would refer the writers of the final report to a number of deputations that this committee heard with respect to the question of how to ensure that the process is as clean and fair and open and honest a process as we can devise. There were a number of deputations which felt that when the state is the body that is able to completely devise the question without any sort of check and balance, that could lead to a situation where a binding referendum is somehow skewed to a particular choice.

Not that I wish to take issue with anything in particular with our cousins in Quebec, but a number of the examples that the deputants raised centred around the Quebec referendums where it was alleged that the Parti Québécois in two separate instances, 1980 and 1995, tried to skew the question to obtain a desirable response on the issue of Quebec's status within Confederation.

So I guess there have been unfortunate Canadian examples, if these deputants are to be trusted with their interpretation, where governments have misused their power and authority to obtain a desired result. That's something that I think we all want to avoid, because if you truly believe that referendum should be the expression of the public will rather than necessarily the expression of the government of the day, obviously we wish to avoid that.

This clause references the fact that there would be an independent commission which would be charged with a couple of responsibilities. The first set of responsibilities are found in item 6 and refer to the issue of how this commission would vet the final question for referendum, either proposed by citizens or proposed by government, and in my view — I'm trying to animate item 6 — it would ensure that the question is as neutral as possible.

Secondly, in conjunction with Elections Ontario, they would oversee the conduct of the referendum procedure so that it's not the government of the day that is overseeing that conduct. It's made very clear that that would not be appropriate. It should be a separate body.

I do not want to duplicate bureaucracy here, so if it's appropriate for Elections Ontario to oversee some aspects of this, then obviously Elections Ontario would be the appropriate place, but if there are some things that are outside the jurisdiction of Elections Ontario in terms of ensuring that a referendum proceeds fairly and honestly from start to finish, obviously this referendum commission would be in charge of that.

My final point would be that I make reference to justices of the Supreme Court of Ontario, which would be involved in this commission. My view is that they can be trusted to ensure that things are done in a neutral, fair, open and honest way, and so they would be the natural repositories of fairness in that regard.

The Vice-Chair: Mr Silipo, we're at number 6 and we're dealing with Mr Clement's rationale for his positing that position. Comments?

Mr Silipo: Yes. I should tell you, I was out there responding to Minister Snobelen's announcement of a 10% tuition fee increase, although in typical government fashion it's actually allowing colleges and universities to increase up to 10%. I'm sure my government colleagues already know this.

Interjection.

Mr Silipo: Pardon?

Mr Ron Johnson (Brantford): How much is that for the schools?

Mr Silipo: I don't know. The minister apparently didn't even have those numbers.

Mr Ron Johnson: You didn't listen to him, that's all.

Mr Silipo: On item 6, and I apologize if this issue may have been addressed while I was out, it strikes me here that again the question of having a body that would be responsible for approving the final question for referendum is a useful way to go. I hope that in the report we would sort of flesh that out a little bit in terms of the rationale for that. I think that's a good thing to do. But I don't see the wisdom of actually having that issue interwind with the conducting of the referendum, particularly because I do think there is a distinction here between a process that's necessary to sort out what the final question should be, and there I think the potential for involving the justices of the Supreme Court is maybe a useful way to go, although I hope we would put that not as a finite way to go but as a useful suggestion in terms of the government thinking about how to set that up.

1710

Where I have a difference is in terms of the rest of the motion, the last part, which talks about the conducting of the referendum. There I would suggest — and this is coming from a New Democratic Party member, let it be noted — that you don't need to duplicate the service you already have in the elections commission, which is responsible for running elections. In fact, what we should be doing, what I think would be logistically easier to do, in terms of the conducting part of the referendum, is to let the people who already have the expertise — I think it's the election commission —

The Vice-Chair: Elections Ontario.

Mr Silipo: Yes. Let that body have that responsibility for running the referendum, because the process would be the same as or similar to the one we would use in the election of members to the Legislature. Why create another structure that would have that responsibility when that expertise exists? What pieces of it don't exist in terms of whatever else comes out of this could more easily be added to that body than set up with a separate commission. I think that would be a more useful separation of these two issues than having a completely separate commission.

Mr Gerretsen: That's exactly our point as well: The framing of the question has nothing to do with the conducting of the actual election. We already have bodies set up for that and should utilize them.

Mr Clement: I'm quite willing to amend my motion to eliminate "and oversee the conducting of the referendum," so long as the final report indicates that Elections Ontario would be the appropriate vehicle, and for items within referendums that are not automatically part of

Elections Ontario, we would either have to go to the commission to solve or to Elections Ontario to solve. There has to be some body that is independent of government that would solve those issues, rather than the government of the day. That's the purpose of my submotion. If it gains the agreement of my colleagues and friends across the way, I'm willing, given those caveats, to remove "and oversee the conducting of the referendum."

Mr Gerretsen: I agree with that. The other question I have deals with the independent referenda commission. Are we talking here purely about referenda initiated by the province or a citizen group within the province, or are we also talking here about municipally initiated referenda? Do we also want the justices of the Supreme Court involved in that, or would it simply be left to the local municipality to frame the question?

Mr Clement: When I framed the motion, I was referring to anything that was conducted in the province of Ontario pursuant to the legislation in place. Theoretically, I guess that would mean on the issue of municipal referendums as well — binding referendums; not plebiscites under Bill 86, but binding referendums.

Mr Gerretsen: So if there's a municipal binding referendum, the question would be settled by this independent referenda commission as well.

Mr Clement: The final question would be vetted for its neutrality, yes, sir.

The Vice-Chair: Any additional comments about number 6? Do you want to put in, Mr Clement, wording to replace "oversee," or will we just stop, period, at "referenda"?

Mr Clement: Correct.

The Vice-Chair: Very good. Mr Silipo, do you want to go back and deal with 3?

Mr Silipo: Sure, if you wish.

The Vice-Chair: Is that the wish of the committee? Proceed.

Mr Clement: You're on a roll there, Tony.

Mr Silipo: I think, from what I heard Mr Clement say, that his problem with what I'm suggesting is that he envisions that even though an issue may only apply to one part of the province, somehow everyone in the province should be involved in being part of the threshold for citizen-initiated referenda.

I have a bit of trouble with that logic. Maybe the example I've used isn't the best one because I know it triggers certain emotions and reactions. It's the starkest one I could think of, but there are lots of others we could think of where it could be an issue that clearly in everybody's minds applies only to Ottawa or applies only to the northern part of the province, and to say that that issue — this doesn't fit under the municipal umbrella we have in here, because whatever is being requested would not be within the power of the municipality, local or regional, to enact.

That's the distinction for me. I appreciate that there is also a structure envisioned in here that would deal, on a parallel basis, with municipalities and citizen-initiated referenda, under number 5, that deal with questions within the jurisdiction of municipalities to decide. The problem we have is, what do you do when the jurisdiction is provincial but the issue is local?

I'm not talking about where there's doubt about that. I'm talking about where the law has to be changed by the province, by the provincial Parliament, but it's clear in everybody's minds that the impact of that would only be to one particular area. Municipal governance is probably the easiest example I can think of, but I'm sure there are many others. In that instance, I can't imagine why we would want to have the citizen-initiated petition have to apply across the province.

Why would people in downtown Toronto care about what the governance structure locally should be in Ottawa? Maybe this is again something that would help if there were more time to reflect on this. I'd be happy to stand this down if you want, because I presume we're not going to finish this today, even with our best efforts, and it may be that we can find a meeting of the minds with some time for reflection on this.

That's the gist of what I'm saying. That's why I made the point at the beginning of this process, if you'll recall, Mr Chair, when we were talking about the jurisdictional question. I wanted it to be clear at that point and the answer I got was that, yes, we were dealing here with questions that could apply province-wide as well as questions that could apply on a regional basis. I think it's an issue we have to sort out.

Mr Gerretsen: I have the same concern. I can think of an issue that could very well become provincial, something I've been advocating for years, that the province take a much stronger role in, for example, waste management sites etc. As a matter of fact, I think the province should even operate these, rather than having municipalities do study upon study and not being able to agree where they should be located. As a result, millions of dollars have been wasted in the province.

I could well imagine a situation where you're going to ask the people of a particular area, not in one municipality but in an area that encompasses more than one municipality, whether there should be a dump located there. I'm sure the people who live far away from there would have to say, "Yes, that's a good idea." It's a situation that affects a local municipality, but the way this is written, it could in effect be determined by an area much larger than that, people who may benefit from that waste management site being in a particular area saying: "Sure, we all agree it should be in location A, B or C. We're not directly affected, other than that we benefit from the fact it's there because we can now utilize it."

I'm saying that I support Mr Silipo's amendment that if you're going to have issues that are not province-wide but that affect one particular municipality, whether it's a regional municipality or a local municipality, the rules should apply to the area that is going to be, in one way or another, affected by it, the same 10% rules.

Mr Clement: I understand the conundrum we're in, but I have a difficulty with the phraseology. Mr Silipo says there might be issues that only apply to one part of the province. My difficulty with that is that there are lots of issues in this House that putatively apply to only one area of the province but they are provincial issues, issues that involve every one of us in the Legislature. I think it would be a mistake to break from that practice. I think you can find, in whatever issue is before the province, an

issue which has an impact throughout the province. I've already said why Bill 103 is an issue not only for Torontonians but all of us, and I believe there are other examples.

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My friend from Brantford reminded me that there might be changes to the way the hydro board is constructed in a particular municipality which, if passed, would have repercussions in either adjoining municipalities or throughout Ontario. There are lots of cases where, although they look on the face of it to be a local issue, they have provincial connotations.

It may well be that what we are coming up against is that there are some issues which are just not appropriate for referendums. It may well be, because we're in this conundrum, Mr Silipo, that we are coming up against something where you say, "Because of the nature of the question and the nature of the answer sought, in this particular case a referendum is not appropriate." I hope those issues are few and far between, but there may be an argument to be made that it was not foreseen that binding referendums would not have that particular say on that particular issue.

I don't particularly want to set out what those issues are. We have to understand that jurisdictions change over time and issues change, but one rule of thumb is to say that if it is an issue before the Ontario Legislature, it is an issue for all Ontarians to have a say in. That might be an effective way of deciding which is a local issue and which is not a local issue and when the referendum should and should not be used.

The Vice-Chair: With your indulgence, before I give the chair back to the Chairman, could I make a suggestion as to handling of this item? If it couldn't be settled today, could we possibly get our legislative researcher to look — there may be examples of referenda provincially but of a regional impact. Those could be brought to the committee for the final round. That's just a suggestion I make.

Mr Silipo: I would certainly be fine with that, Mr Chair, as I would be with us not proceeding to a vote on this and allowing people to think about it over the course of the next week. If Mr Clement wants to maintain his present position, with all due respect, it's untenable for you to say that an issue like the local governance structure in municipality X should be determined by the people who might want to change that having to go and convince people across the rest of the province in sufficient numbers to be able to exercise their right, which you want to give them, to a citizen-initiated petition. It nullifies automatically the right to a citizen-initiated petition for a whole slew of issues if you're going to do that, and it makes what you're trying to do severely limited.

I'm assuming that other jurisdictions have had to deal with this, so it would be useful if we asked legislative research to take a look at what other examples might exist of similar types of situations. Maybe that will help us in getting through it.

The Vice-Chair: Before we go on, do you see us finishing this today? Are there other items that are going to take us right up to 6? I just want to get a direction.

Mr Silipo: I have some further comments on the next item. There may be a couple of other things, but not long ones.

The Vice-Chair: Is that agreeable?

Mr Clement: Mr Chair, we await some further research.

The Vice-Chair: I'm just throwing it out as a suggestion.

Mr Gerretsen: I find it extremely encouraging if Mr Clement, after his extensive research and delving into this problem as extensively as he has over the last two or three months, has finally come to our position that indeed there may be many issues that simply do not lend themselves to being subject to a referendum. We are often discouraged in this place, sitting in the opposition, but I'll tell you, moments like this really make it worth my while.

Mr Clement: I think you're being sarcastic.

Mr Gerretsen: I'm never sarcastic. I mean that. It's quite encouraging to see that you've sort of come around to our position on this issue.

Mr Stewart: Just one comment: I have difficulty really seeing what the problem is because I think it's a very finely defined area of what the province is in control of and what the municipalities are. If you talk on Mr Gerretsen's thought about municipal landfill, clearly that was given to the upper tier back two or three years ago under the previous government. To have an Ontario referendum for landfill in Kingston or whatever is certainly not an Ontario issue, and that's what we're talking here, as I understand. If there are referendums that involve all of Ontario, indeed you have 10% of Ontario. If it be a local issue, as pertained in Metro, that in my mind is clearly a municipal issue.

I don't understand how we're trying to make something that I believe is very simple, very complex. I'm not being critical. I'm just saying that Ontario has jurisdiction over this and if we call a referendum for it, then indeed we should have the 10% for all of Ontario. I can think of welfare, consolidated welfare, and there is a problem, as they know, in the province that maybe that should be done, but if you get involved with landfill or something like that, which is clearly a municipal issue and has been for a number of years —

Mr Gerretsen: A toxic waste site is not a municipal issue.

Mr Stewart: I'm not talking about toxic waste. If you talk of a toxic waste site where you are going to have toxic waste probably coming into it from across Ontario, travelling the roads of Ontario, absolutely. It's an environmental issue, so why wouldn't it be an Ontario 10%? Because it affects all of Ontario. But if you're talking of a landfill in Peterborough county or a landfill in Kingston, that indeed in my mind is clearly a municipal issue. I just can't understand why we're trying to make something I believe simple, very complex.

Mr Gerretsen: All of Ontario should have a say as to whether or not there should be a toxic waste site in Peterborough county.

Mr Silipo: I think Mr Stewart asks a good question. I just want to be really clear that I understand the distinction between municipal and provincial, and I know that

this proposal in front of us does address that. It addresses the two issues where there can be a request by a group of citizens to have a referendum on an issue that applies across the province and on which the provincial Legislature has the legislative right to make that decision versus an issue on which a municipality has the power to make a decision — that may include a landfill site; I don't know — and applies to that particular municipality or area. I'm not quibbling with either one of those.

I'm talking about I guess a third situation which we do have to address — I'm not trying to make it complicated but I think it's an issue that we have to address — which is where the application of the change is regional or local but the jurisdiction is provincial. Again, and please accept this, I use the example of the amalgamation within Metro not to try to rile any antennae but because it's the clearest example I can see in front of us. Clearly you couldn't have a municipal referendum under this structure and have it mean anything, because it's not the municipality that would be able to change anything, it would be the province that would have to make the change, if you're talking about those kinds of changes, and yet the application of that is not provincial. Yes, there may be implications, but there may be implications to anything we do.

That's the dilemma and that's why I was suggesting the dual application of the 10% threshold. But as I say, maybe the best way to deal with this is to see how this type of situation has been dealt with elsewhere, if it has, and see whether that helps us.

1730

Mr Clement: I'd be prepared to move on to item 7.

The Vice-Chair: We'll have the legislative researcher come back with some background on this in our next, final round hopefully.

Number seven: Who wants to start off on that?

Mr Clement: I could just state for the record the intention of the mover on this. Clearly we had a number of deputations before us that were quite concerned that the referendum was going to be used as a tool to defeat entrenched minority rights that were found in the Charter of Rights and Freedoms and the Ontario Human Rights Code. This makes it clear that the referendum in Ontario would not be used for such a purpose; that if there was something that was, on its face, in violation of the Charter of Rights and Freedoms or the code, the commission would have the ability to negate that question and the referendum would not proceed. I think that goes a long way to assuaging the concerns that we had heard at the committee.

Mr Silipo: I support the intent of this very strongly and I urge that we find some fairly strong language in the report to indicate that this is really a major concern that has to be addressed in the legislation very clearly. I'm not sure that we've done it completely here. I know there may still be some concerns. I don't have any additional words to offer at this point, but I may have in terms of the actual words that we put into the report. Again, I'm putting forward these comments in a helpful and constructive way, but to indicate that it may very well be that simply dealing with this in the context of the charter and the Ontario Human Rights Code may not cover the range of concerns that we heard about.

I'm not sure. Perhaps if our research staff, in looking at this, could also look at whether that would leave out some concerns that we heard some of the deputants, if we were to limit it this way. I don't know if Philip is able to respond to that now, or perhaps in coming back he could look at that, because that would be my concern: whether this captures the fullness of the issues that we had presented to us, which I think there was general agreement to deal with and respond to in a positive way.

Mr Philip Kaye: A formulation which might capture more of the submissions might make reference to the commission determining whether the referendum question is in violation of rights entrenched in the Constitution, including the Charter of Rights and, for instance, denominational education rights, because that was a concern. Those rights are not in the Charter of Rights but in the Constitution Act of 1867. Aboriginal rights, for instance, are not in the Charter of Rights but in the Constitution Act of 1982, in a section right after the Charter of Rights.

Mr Clement: I'm not saying no to that wording. One question would be, if there was a constitutional amendment proposed by the premiers, let's say, that affected those rights, because it might be against the current Constitution, but it might be a constitutional amendment to change the Constitution that would affect these rights in some way, or maybe the argument will be raised by its opponents that it does affect their entrenched rights, what do we do in a case like that?

Mr Kaye: That issue is raised by the existing wording as well, because what if there was a constitutional amendment to the Charter of Rights?

Mr Clement: I'm not saying no to that wording. I'm just saying, as long as we make it clear that there has to be an exception for constitutional amendments as proposed by governments. We're getting into a morass here, I can see.

Mr Silipo: Mr Clement, would it be helpful — wasn't the intent behind 7 to deal with citizen-initiated referenda, essentially? I'm not sure that I would agree with this; I'd need to reflect on it. But that would be one way to separate it out, because either way, Philip is right: We have to address the question of requests for referenda that would in fact be requests to amend the Constitution. How do we deal with that? One way would be to say they can't come under the umbrella of citizen-initiated referenda; they would fit under your proposed scheme, under item 2, as part of changes to the Constitution. In fact, they would be mandatory in that case.

Mr Clement: I'm thinking out loud, Mr Silipo, but as a matter of law, the government of Ontario and the government of Canada are bound by the Charter of Rights and Freedoms, for instance, and the Ontario Human Rights Code. Individual private citizens acting in private contexts are not bound by the Charter of Rights and Freedoms. So I guess my answer to your question is, yes, it was directed towards citizen-initiated referendums, because in actuality the government of Ontario is bound and cannot promote a law that is contrary to the charter, for instance; that would be contrary to the charter by doing so. I'm just working it through in my own head here, but I guess that makes sense from a legal perspective.

Mr Silipo: I suggest this is an issue that we do have to, one way or another, be clear on in the report; or if

we're not going to deal with it, we should at least point to the issue and say we don't have a position on it. Because it is going to be one of the questions that the legislation, when it comes back, will have to address, which is, where does referendum, whether it's citizen-initiated or government-initiated, fit in when the request that's being made is to try to seek a constitutional amendment? That's what it would be in that kind of instance.

The Vice-Chair: Let me make a suggestion here on this one then. Would it be possible that we could have Philip check out how solid the intent of your point is, Mr Clement, taking into account the presentations we did here about protection of minority rights, and actually reference that out, and then in the next section, right under that, deal with what you two gentlemen have been dealing with in addition to what you have originally stated in here about the Charter of Rights and Freedoms and the Human Rights Code?

Mr Clement: Right. I have no objection to that. I'm perfectly fine with saying anything in violation of the Constitution Act of Canada, but I would also like a reference — even though I know it is part and parcel of the Constitution Act of Canada — to the Charter of Rights and Freedoms separately to make it clear to anyone reading this that we are dealing with the charter as well as the Constitution Act. But I'm willing to broaden it out, unless my colleagues have an objection —

Mr Silipo: Why wouldn't you just say on that then "in violation of the Constitution of Canada, including the Charter of Rights and Freedoms"? I think it's clear; I think you need to have the broader one.

Mr Clement: Yes, that's fine by me.

Mr Gerretsen: My concern is about something else. It deals with the notion that the final question is already going to be put by this commission and now we're also asking it, in effect, to take a position on the legality of the question. It reminds me a little bit of the situation where you're asking the same body to come up with the proper question and then to make some sort of ruling as to whether or not the question is legal. It would seem to me that the question itself maybe has to be supported by a legal opinion from some outside source or body as to whether or not the question violates the Constitution of Canada or the Ontario Human Rights Code.

I always find it very dangerous that if you have the ultimate decider — because let's face it, if there is a challenge somewhere along the line on the constitutionality of the question, the Supreme Court of Ontario would probably get involved at the initial instance, and now you're having that same body decide in this administrative process in which it determines whether or not the question is properly posed etc. At that outset you're going to have to decide as to whether or not the question is constitutionally legal etc. I have some difficulty with that.

I don't think there's any problem with respect to getting whatever the question is supported by an outside legal opinion, but I don't think that legal opinion should be given by the court system that may have to deal with the issue at some point in time in the future.

Mr Clement: Mr Gerretsen raises a good point. I think that in reality with anything that was controversial — and that's presumably why we have referendums, because if something was not controversial there would be no need for one — presumably legal opinions would be flying hither and yon. I would expect that to be the case.

I guess I envisioned this referendum commission playing a quasi-judicial role. I'm not sure about the niceties of what that means in terms of the review of those decisions. Presumably it would be like anything under the Statutory Powers Procedure Act or any other piece pertaining to administrative law in the province of Ontario where administrative or quasi-judicial opinions frequently are reviewable, except in a few cases like the Labour Relations Board and other well-trodden ground. So there would be a reviewable procedure. Even though a judge was involved in the first instance, there would be an opportunity to review, just as there are opportunities to review a lot of administrative or quasi-judicial positions in our system of administrative law.

So I did see it as probably, let's face it, somebody's going to take somebody to court at some point, and take this commission to court because they didn't like a decision. That's going to happen. I suspect that when these issues get dusted up there will be legal opinions going back and forth on whether this is an appropriate way to proceed. That's how I see it working in reality.

1740

Mr Gerretsen: That's precisely why I had some concern as to whether or not the judiciary should be involved at the outset in even making some sort of ruling on the question itself. That's why I think there maybe should be an independent body.

Mr Clement: We've got lots of administrative tribunals and commissions. I just think of the Krever commission where you have a judge of the Supreme Court whose decisions and non-decisions are being reviewed by the Supreme Court of Canada right now. It's not unheard of to have situations where sitting judges are having their decisions from an administrative law point of view reviewed by a higher court. I don't have a particular problem with that so long as it's all done aboveboard and in accordance with the principles of administrative law in the province.

The Vice-Chair: Have we exhausted discussion on this item pretty well?

Mr Gerretsen: I've indicated my concern about it and I'd like to have it noted, and maybe legislative research could come up with some —

The Vice-Chair: Could see how it's handled elsewhere?

Mr Gerretsen: Take a further look at it, yes.

The Vice-Chair: Okay. Then let's try, if everybody's in assent, number eight.

Mr Clement: Just to start off very quickly, item 8 was an attempt to get around the — not get around but to meet the issue of what would be the effect of a referendum passing, particularly citizen-initiated referendums, because that would be a case where the government of the day or the Legislature of the day would not necessarily be committed to the referendum's passage.

It says a couple of things: Number one, based on the recommendations of Mr Boyer and others who appeared before this committee, we would be looking for a yes or no answer from a clear and concise question, and the passage would require 50% plus one, versus 66% or some other higher method. It would be just a clear majority of voting Ontarians.

The effect of the passage I tried to divide into two cases. In the case of a simple question it would be a government bill introduced for first reading, and in the case of a more defined bill or proposition — I'm using the terminology from our cousins to the south where in some cases propositions are quite extensive and complex but none the less clear. In those cases where a form of legislation is asked to be agreed upon by the people in a defined bill, that would be introduced for second reading, again as a government bill, where the government could entertain amendments if things crop up at committee, but in essence the government would agree with the principle of the bill and would have to proceed on that basis.

That is our way of trying to usher in an era of binding referendums within the context in which we have to work, which is a parliamentary democracy with a crown at its head.

Mr Silipo: I think I understand a little bit more clearly now the difference in the second part of that motion, but I suggest that what we should do here — and there's that in addition to the question of 50% plus one. I'm in agreement with 50% plus one. The only caveat to that would be that if I could just put a place-holder in there, based upon whatever we decide, back on the point that I was making about the regional issue on number three. But whatever we determine on that, in either case I'd be more than comfortable with 50% plus one.

The second point here, and I was looking to see whether we actually say it anywhere, is that I'm assuming that Mr Clement is actually agreeable to the notion that if there is 50% plus one, then the government or the municipality, as the case may be, is bound to implement whatever the question is that's been determined. Right?

Mr Clement: Yes.

Mr Silipo: Then the rest of it is simply two examples of how that could be done, depending on the scenario.

Mr Clement: If you've got any suggestions, Mr Silipo, on how to nail this down further without having the whole thing thrown out —

Mr Silipo: It may be that the best way is not to get into this question of first reading versus second reading. I'm not sure where it gets us. What we should be doing is being clear. Even if we do have this distinction, we need to insert something here that says very clearly that what we're recommending is that where that 50% plus one is achieved in a referendum, then the government and/or the municipality, depending on what the referendum is, is bound to implement that decision, and then if you want to go from there, to talk about how they should implement that. That's what I think you've been saying.

Mr Clement: That is exactly what I'm saying, but again maybe it's the lawyer in me, I was led to believe by our committee hearings that you should not — we're at a pre-legislative stage so maybe it doesn't matter, but we have to find some wording eventually which says the

government is bound without saying the crown is bound. That's the problem, because you cannot bind the crown constitutionally in this country.

Mr Silipo: All right, that's fine. I think the intent would be that the government of the day, just leaving out the provincial level for a second, would be bound to respond and that would mean in effect carrying forward a piece of legislation right through to passage, to first, second and third reading and presenting it to the crown to sign. Right?

Mr Clement: Right.

Mr Silipo: Maybe there's something I'm missing here in terms of this. I guess what I'm saying is we don't have to get into the nuances of the crown because it's not the crown that's got the responsibility to initiate the bill. It would be the government. But it has to be clear and the law would have to be clear, if this is what you're intending to do. Otherwise, it just becomes a plebescite, and I think you've been clear in saying it's a binding referendum. If it's binding, then it means the government of the day has to respond by within — whatever — reasonable time lines. I'm not sure we should get into all that kind of stuff — maybe we do, to express some of that — but clearly we have to indicate the government or the municipality is bound.

First of all, that principle has to be in the report, and secondly, if we need to get into how that should be proceeded with, I think we can, but I'm not sure we need to here. I'm assuming that the distinction between this first reading and second reading depends upon what is actually being put in front of people in the referendum, because Mr Clement is envisioning the possibility where somebody's actually drafted a bill and presented that as part of the referendum question. My sense is let's cross that bridge when we get to it.

What we need at this point is a legislative framework that says clearly what the intent is, facilitates the process through and deals with that. If the drafters, when they look at the legislation, feel they've got a deal with each of those possible scenarios, then that's fine, we can deal with it then.

Mr Gerretsen: This whole discussion has been going back and forth. It's really sort of solidified my view on it. Here we're having the government member saying we can't bind the crown. That's the whole purpose of a mandatory referendum.

Mr Clement: I'm saying the Supreme Court of Canada has said you can't bind the crown.

Mr Gerretsen: I know you can't bind the crown, so if you can't bind the crown, then do away with mandatory referendums. Use referendums to get a better sense of the public opinion that's out there on a particular issue that's out there. You can't have it both ways. It seems to me that the government will say, any government — I'm not trying to make this a partisan issue, but it seems to me that if we have a referendum along your lines of a mandatory referendum, and if all the government has to do is either introduce a bill for first or second reading and then stop the process, that to me is saying you're not really having a mandatory referendum, because the government can in effect decide not to carry out whatever the decision of the referendum is. Then let's call it for

what it is. Let's just call it a discretionary referendum that can be implemented if the government feels like doing so, rather than giving the public the impression that somehow if we're making it mandatory, whatever you decide, we're going to implement.

1750

I agree with you: We can't bind the crown. If you can't bind the crown, then say so openly and fairly to people and say that all referenda, no matter what you decide, may or may not be implemented, the results may or may not be implemented by the government of the day. I certainly agree with that notion. But you can't sort of bring up these legal kind of arguments to the general public if you do not like a particular result that happens as a result of the referendum, because I don't think that's being honest with the general public.

Mr Ted Arnott (Wellington): I'm not supposed to be engaging in this, but I just wanted to point out that in a minority situation, of course, the government of the day can't be assured of passing any legislation and we've got to come up with some way around that, obviously, if Philip considers it.

Mr Clement: I thank Mr Arnott for that point because it's a good one as well.

Just so readers of Hansard are sufficiently clear on this, we on this side, and I believe Mr Silipo representing the NDP caucus, are fully in favour of binding referendums. We want to bind as much as possible. If it was within my power to bind the crown — I believe it's only the power of God to bind the crown and I'm not God — if I had that ability to bind the crown, believe me, I'd put it in item 8 here. But I don't have that ability, and the Supreme Court of Canada has made it clear by throwing out referendum legislation in Alberta in the 1930s and what not.

If Bill Aberhart can't bind the crown, then certainly Tony Silipo and Tony Clement cannot bind the crown. We just can't go there. We cannot get there from here.

What we are grappling with, Mr Gerretsen, is how best to make this very clear, that the government is bound by the decision, both morally and legally. It is a government bill. It is a whipped vote. I'm not sure exactly how we cover off everything. I am not sure of that. I will plead guilty to that. But we believe, and I think Mr Silipo believes, that we should use every contingency we can, if it's a provincial issue or a municipal issue, whatever — it goes for the municipal as well — that we are seeking to make this a government piece of legislation with all the resources that the government has at its disposal to pass a piece of legislation.

That is the intention of item 8 and I take your point and Mr Silipo's point that we didn't quite get there with my wording. I'm quite willing to have whatever wording we can come up which relays to the Legislature our intent to make this as binding as possible within the law.

The Vice-Chair: Mr Gerretsen?

Mr Gerretsen: I don't think that talking about first reading or second reading is going to do it because you and I know — the general public perhaps doesn't know out there — that first and second reading doesn't get you anywhere if it stops at that process. What you've set up here is a situation where a government, after it's given a

bill first and second reading, in accordance with this particular rule can simply refuse to take the matter any further.

Mr Clement: Then let's change the wording.

Mr Gerretsen: In effect, it has frustrated the so-called mandatory will of the public at that point in time.

The Vice-Chair: Any other considerations on point 8? Do we need to get some clarification from —

Mr Silipo: I would say, Chair, that if we're clear on the intent, then the —

The Vice-Chair: The basic principles?

Mr Silipo: Let's put the words in the motion that state the intent and then let's worry about the mechanism later on, or let others worry about the mechanism. If the intent is that this be binding, then we need to say it's binding. If we're not sure on what the best mechanism is, then let's just say that's something that has to be addressed when the legislation comes back. Maybe in the meantime we can think of something better that does it.

Mr Clement: Can I suggest this wording then: in the third line after "The effect of such passage would be," strike out the rest and insert "to make the referendum result binding upon the Legislature of Ontario."

Mr Gerretsen: I would never agree with that because it may very well be that the opposition at that point in time —

Mr Clement: I see. You're only binding the government then?

Mr Gerretsen: Of course. It's the government that is bound by a referendum, according to your notion. You cannot bind all the members of the Legislature. It may very well be that on the particular issue, whatever the issue happens to be, the opposition parties have a completely contrary viewpoint.

Mr Clement: Either you accept the wishes of the people or you don't.

Mr Stewart: We're talking about the people's decision here.

Mr Silipo: It may be that looking at what happens elsewhere might shed some light on this. I agree you either write it in a way that says the Legislature is bound or you write it in a way that says the government is bound, and remind people that at the end of the day the government isn't all of the members of the governing caucus. I know the dangers that poses, but I don't know how else you would do it, because presumably we still want some way that doesn't bypass the parliamentary process — right? — that doesn't turn a resolution passed in a referendum automatically into a law without going through the process of vetting the law, so we've got a bit of a dilemma here.

I don't know what happens in other jurisdictions where it's clear that whatever is passed gets implemented. That's all we hear about. We don't hear how it gets implemented. Presumably there have to be laws introduced at some point, so maybe again if we state the intent, we can then look at the experience of other places that have dealt with this very dilemma as some guidance for how that's done.

The Vice-Chair: Before we conclude today, Philip would like to provide us with some information.

Mr Kaye: British Columbia is the only province currently which has legislation providing for citizen-initiated provincial referenda and that legislation is in British Columbia's Recall and Initiative Act. It says that the consequences of a vote where a majority is in favour of the measure holds that the government must introduce a bill for first reading. That's the only example in Canada at the provincial level.

Mr Gerretsen: All I would simply say is that quite often the differences that parties may have are not in the general manner in which the bill is written or what the bill is trying to accomplish, but rather in the detail that is contained in the particular bill. I find it very difficult to envision a situation, unless the question is clear-cut and the bill is a clear-cut, one- or two-line bill etc, where you can take a referendum question and simply implement it into a law without there being arguments about the manner in which it's implemented or the various provisions that the subject matter may deal with. I don't think you should bind the Legislature.

Mr Kaye: I should add as well that Saskatchewan does have legislation providing for citizen-initiated plebiscites, but because they're plebiscites they are not binding, so the question as to what the effect on the government is in terms of the options doesn't arise. It's only in British Columbia where there's any kind of binding effect for a citizen-initiated provincial referendum.

Mr Clement: Could I just go back to my original wording then, because I tried to make it clear — perhaps it should be more clear — that whatever bill is introduced has the impact of being government-supported. I'm quite willing to make that clear. Perhaps it's a bill that you could say is a government-supported bill, so first reading and second reading, having reviewed again what British Columbia does and having seen a bit of what California does — California's propositions have the exact bill as part of their proposition, so they skip a step that we are allowing to occur, because we know that in some citizens' initiatives perhaps they have not crossed every t and dotted every i. I am not trying to presuppose, but that may be the case. I prefer to go back to my original wording, then, and just to add a clause saying which bills would be supported by the government.

Mr Gerretsen: I'd just like to go on the record, Mr Vice-Chair, of commending you on the excellent manner in which you ran this meeting today.

The Vice-Chair: Thank you very much.

Mr Gerretsen: You're getting the official thanks from my caucus, anyway. I think you did an excellent job here today; I'm not saying about any other day.

The Vice-Chair: Thank you very much. Before you go, thank you very much for entertaining my activist position. I'd like to thank all the members for getting us up to 8. Next week we'll come back — that's February 12 — and we'll deal with all these points, 3, 7 and 8, plus the remainder.

The committee adjourned at 1801.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr John Gerretsen (Kingston and The Islands / Kingston et Les Îles L)
for Mrs Pupatello

Clerk pro tem/ Greffier par intérim: Mr Doug Arnott

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

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Mercredi 12 février 1997

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 12 February 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 12 février 1997

The committee met at 1554 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We are continuing our discussion on the issue of referendums.

Last week a number of issues came up that the Chairman suggested Philip look at to see if there was further clarification, and Philip wants to inform the committee of the results of his research on issues raised relative to points 8, 3, 7 and 6, I believe. Philip, could you give us your advice?

Mr Philip Kaye: There were four general issues as such that were raised last week where I was asked to do some further research. One of those issues comes out of item 8 in the motion before the committee, where I've been looking at the issue of constitutional limitations on the legal effect of referenda. For instance: To what extent can the Legislature be bound by the results of a referendum? Also, what kind of legal effect do binding referenda have in other provinces?

In November I prepared a memorandum for the committee entitled *Constitutional Cases re Citizen Initiatives*, which has been redistributed this afternoon. That memorandum partially addresses the questions I've just posed.

For instance, on page 2 of the memorandum I make reference to the fact that over 70 years ago the constitutionality of two provincial models of the citizen initiative was tested in the courts. In 1919 and three years later, in 1922, the judicial committee of the Privy Council in England ruled on the validity of Manitoba's Initiative and Referendum Act and Alberta's Direct Legislation Act.

To briefly summarize the legislation in question and the decisions of the Privy Council, under the Manitoba legislation a proposed law that was initiated by electors and approved in a referendum automatically became law as though it were an act of the assembly. Enactment of such a law, then, did not require any action on the part of the Legislative Assembly of Manitoba or the giving of royal assent by the Lieutenant Governor.

The Privy Council found the Manitoba act to be invalid. In particular, it said that the bypassing of the office of the Lieutenant Governor constituted an amendment of the Constitution of Manitoba that went beyond provincial powers under the British North America Act.

The Privy Council did not consider it necessary to comment on whether the bypassing of the Legislative Assembly also made the act invalid, but the court which dealt with this matter before the Privy Council, the

Manitoba Court of Appeal, did say the Constitution vested primary law-making powers for a province in a Legislature which involved some type of representative assembly. Thus, the Manitoba Court of Appeal had concluded that laws could not be enacted by direct vote of the people instead of by the Legislature itself.

Mrs Sandra Papatello (Windsor-Sandwich): What page are you reading from?

Mr Kaye: The decision of the Privy Council is outlined starting on page 3. At the bottom of page 3, you'll notice that I mention, "The Privy Council deliberately refrained from ruling on whether the bypassing of the Legislative Assembly was valid," but the lower court had commented on that.

The other legislation that went to the Privy Council involving citizen initiatives was the Direct Legislation Act of Alberta, which is summarized starting on page 4.

Alberta's initiative procedure differed from Manitoba's in several respects. Most significantly, it did not say that a proposed act approved in a referendum automatically became law. Under Alberta's legislation there was no bypassing of the Legislative Assembly. Instead, the Alberta act imposed a duty on the Legislature to pass the act without substantive amendments and then such an act would come into force upon receiving royal assent.

The relevant provision is at the top of page 5 of the memorandum, where I write: "Unlike the Manitoba legislation, if voters approved the proposed act, it did not automatically become law. Instead," quoting from the legislation, "the said proposed act shall be enacted by the Legislature at its next session without amendment...and...shall come into force upon receiving royal assent'."

Alberta passed a liquor act under this initiative procedure. In a case involving an offence under this act, the Privy Council held that the act was not invalid because it had been enacted in this way. It stated that a law was validly made by a provincial Legislature when it had been passed in accordance with the regular procedure of the House and had received royal assent. Thus, a law that went through this process after an initiative vote was still an act, even though it had been the statutory duty of the Legislature to pass it.

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This decision of the Privy Council is the subject of a fair bit of debate, which is highlighted in the memorandum beginning at the bottom of page 5. In *Constitutional Law of Canada*, Peter Hogg comments on this statutory duty on the part of the Alberta Legislature to pass measures approved by referendum under this Direct Legislation Act. He writes, in reference to the Alberta legislation, quoting from the bottom of page 5:

"Once it is accepted that the Legislature's role is formal only, simply to place a rubber stamp on the result of the referendum, then the reasoning which appealed to the Privy Council and Manitoba Court of Appeal in the Initiative and Referendum reference seems applicable again; that is to say, the office of Lieutenant Governor is again impaired, and primary legislative power is again granted away from the Legislature."

Hogg has written of another difficulty in the Privy Council decision in *Nat Bell Liquors*. He says that it violates a basic rule of parliamentary sovereignty; that is, that a legislative body cannot bind itself as to the substance, as opposed to the manner and form, of its future enactments.

Another perspective on this decision of the Privy Council is given by Patrick Boyer in *Direct Democracy in Canada*, who in reference to the judgement says: "It was the Legislature itself which had passed the act by which it agreed to share or limit the scope of its law-making powers." Boyer comments that the *Direct Legislation Act* "did not empower the electors to enact or nullify laws. It simply gave voters, in a somewhat filtered form, both a negative and a positive voice."

This Alberta legislation remained in force until 1958, and as mentioned in footnote 26 at the bottom of page 6, it was repealed as the result of a citizen who made inquiries into the possibility of using it. That inquiry was referred by the government to the Deputy Attorney General, quoting Patrick Boyer, "who gave a cautious legal opinion that the act was ultra vires based on the Manitoba decision." According to Boyer, "That opinion unfortunately persuaded the government."

Apart from the constitutional limitations discussed in these two decisions of the Privy Council, there is a limitation found in the *Constitution Act of 1867*; it's also in Ontario's *Legislative Assembly Act*. It says that the assembly cannot pass a bill for the appropriation of any part of the consolidated revenue fund or the imposition of any tax without a recommendation from the Lieutenant Governor.

With respect to binding referenda in Canada, discretionary referenda are binding in British Columbia and Saskatchewan. In both provinces, the government must take steps considered necessary or advisable to implement the results of the referendum, such as introducing or changing programs or policies, or introducing a bill during the first session after the results of the referendum are known.

With respect to initiative votes in British Columbia, the government must introduce a bill at the earliest practicable opportunity. If the bill deals with the appropriation of any part of the consolidated revenue fund or the imposition of a tax, the government must first request the Lieutenant Governor to recommend the bill.

Those are the key constitutional features, I would say, in terms of the issue of the implementation of the results of a referendum vote. There are not very many court decisions, as I said. There are just these two decisions of the Privy Council in terms of initiative legislation and there's much debate over whether these two decisions are consistent and whether the second decision represents good law today.

Another issue that was raised last week pertained to citizen-initiated referenda which would take place on a regional basis —

Mr Bud Wildman (Algoma): Sorry, could I ask the Chair that if there are any questions on this particular matter, we deal with them now before we go on to the other parts of Philip's report? Is that all right?

The Chair: Sure, if there's the consent of the committee, that's fine. Mr Wildman, did you have a question related to that point?

Mr Wildman: Yes, I do have some questions. I don't mean to get into a debate now.

The Chair: If there's a specific question you'd like to ask, go ahead.

Mr Wildman: I was going to raise the last point that you mentioned. Since under our Constitution and rules a private member of the Legislature cannot initiate a private member's bill which appropriates or spends funds — that is a matter for the treasury bench only; the government is the only one that can do that — it would seem to me reasonable and consistent with what you've said that there could not be a piece of legislation that made a referendum which required the expenditure of funds binding on the government. It would seem to me that would be held to be against the Constitution of Ontario and of Canada, would it not?

Mr Tony Clement (Brampton South): I disagree with that interpretation.

Mr Kaye: In British Columbia they explicitly allow for citizen initiatives that would provide for the appropriation of part of the consolidated revenue fund or a tax, provided the government first requests the Lieutenant Governor to recommend the bill.

Mr Wildman: See, that's my question. In British Columbia, for example, could the government decide not to proceed, that is, not to ask the Lieutenant Governor to recommend the bill?

Mr Kaye: The legislation is phrased in mandatory terms in British Columbia.

Mr Clement: They have to introduce it for first reading but they don't have to pass it.

Mr Wildman: Oh, I see. All right.

Mr Kaye: They must request the Lieutenant Governor to make the recommendation and then introduce the bill for first reading. But the requirement on the government in BC, whether it's a so-called money bill or not, is to introduce the bill for first reading, and then the legislation is silent at that point.

Mr Wildman: Then the political process kicks in in terms of the public then being able to press the government to proceed or not to proceed.

Mr Clement: I have some wording to clean up section 8 of the motion a little bit in furtherance of what Mr Kaye has produced and in furtherance of some of the research I did.

The Chair: Okay, and when we get to that we would perhaps deal with it at that time.

Mrs Papatello: Philip, based on what you've found in preparation for today, the legal counsel for this committee isn't here today, but I'm curious to know if legal counsel to the committee would have an opinion on what you found.

Mr Clement: I'm sorry, I missed that. Could you just repeat it?

Mrs Papatello: Would the legal counsel for the committee have an opinion of what was found through Mr Kaye's research, in terms of whether binding is really binding, I guess?

The Chair: The committee does have the opportunity from time to time to request legal advice. The clerk advises me that normally the legal counsel are here when legislation is being dealt with by a committee, but otherwise they're not physically present.

Mrs Papatello: I'm just curious. In this case you probably haven't vetted this through legal counsel of the committee, just in terms of having their opinion on it.

Mr Clement: In all honesty, if I can fill Mrs Papatello in, because I don't think she was here for much of the September part of our discussion of this, we did have counsel for the Attorney General who made a full presentation to this committee, partially on constitutional issues. Indeed, much of the earlier submissions from Mr Boyer and Mr Hogg and others dealt with some of the constitutional issues. I guess what I'm saying to Mrs Papatello is that this committee did hear evidence and opinion on the various constitutional aspects of referendum legislation. I can assure her of that.

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Mrs Papatello: That's not my question. My question is, what would be the opinion of legal counsel to this committee in terms of the binding or non-binding nature of referenda? What would the counsel to this committee tell us?

The Chair: We could perhaps request that information, but I don't think Philip has really given a legal opinion on this matter. He's just compiled information.

Mrs Papatello: I realize that and that's my point: May we get the legal opinion of counsel to this committee on that?

Mr Wildman: We could request legislative counsel to provide an opinion or something, I suppose.

Mrs Papatello: I realize they've been here to hear the opinions that were put forth earlier in another session.

The Chair: Could we perhaps check into it and see what the proper procedure is and get back to you at that point? If we can deal with that, hopefully this afternoon, that would be helpful.

Mrs Margaret Marland (Mississauga South): If you're thinking about legal counsel, I recall that it was this committee that had legal counsel on two other occasions dealing with matters pertaining to members. There's quite a protocol to this committee selecting legal counsel. In other words, all three caucuses put in a name and there is a discussion on who that person is who is selected.

Mr Wildman: On that point: Margaret's correct, but in that case we were talking about actually hiring legal counsel. I don't know whether we have any budget in this committee for that.

The Chair: Not at present.

Mr Gilles E. Morin (Carleton East): If we do hire counsel, we have to make sure it's someone who is very well versed in the question of referenda.

Also, just to confirm what the member for Mississauga South said, I remember being on the standing committee

of the Ombudsman. We had a permanent counsel, if you recall, Margaret. His name just escapes me, but he was hired by the committee. He went on for years, close to six or seven years, on the committee. But the question of getting money to hire someone I don't think should be a problem, especially if we want to get some information which is going to be useful to make decisions ourselves.

Mr Clement: This has been an interesting discussion but there is no legislation before this committee. We did hear advice from eminent lawyers who are paid for by the taxpayers and who are employed by the Attorney General, as well as volunteers who happen to be members of the legal profession who came before this committee to depose on these particular issues. We have a lot of evidence of a legal nature, certainly enough that has posed the right questions and opined on the answers to those questions that this committee can make some preliminary recommendations by virtue of a final report. When legislation does come through this committee again, in the form of legislation, then it is perfectly apt to have legal counsel present, but not before.

Mrs Papatello: Let me be clear: When members have an opportunity for private members' bills or private members' resolutions etc, we are able to take advantage of legal counsel through the Speaker or the Clerk's office to vet what it is we'd like to have eventually put in the form of a bill or a resolution so that they can look at something that is appropriate in terms of wording. We can also go to them for legal counsel in terms of their opinion as to the nature of it.

What I'm requesting from the Chair is that given the information that Philip Kaye has presented to us today, which was research that offered more than one opinion, what I would like is the opinion of the legal counsel to this committee as to what was presented today in terms of the binding or non-binding nature of referenda in Ontario. I understand that others have come to the committee and given —

The Chair: It's the private member's bill idea. They go to legislative counsel for advice, doing the research as to what statutes have to be changed perhaps, and also drafting assistance so that it's legally worded. It's quite another thing to ask for a legal opinion. I don't think legislative counsel, as a rule, provide legal opinions. It puts them in a very awkward position relative to any issue that might be of a political nature that's before the Legislature.

Mr Wildman: They will tell a private member, though, if the proposal that the private member is putting forward might be deemed ultra vires.

Mr Ron Johnson (Brantford): That's legislation.

Mrs Papatello: What I would like, Chair, if I may, is to request the legal counsel of this committee, which is dealing with the drafting of a report that will take the form of legislation eventually — that's the intent; that's been made eminently clear by Mr Clement — to view the work of the legislative researcher. I would like their opinion then, based on clearly more than one opinion that was offered by the researcher — that's the job of the researcher, to offer us what he was able to find — as to the binding or non-binding nature of referenda in Ontario.

I'm specifically interested in the issue of binding or non-binding, because I understand that Mr Clement,

speaking on behalf of the government last week, has made various comments to the press, members of the media, as to his interpretation of binding or non-binding and, quite frankly, Chair, speaking on your behalf as well, for work that has yet to be completed by the committee.

In his comments, he was not consistent in terms of what he views as binding or non-binding by government or by the legislators.

Mr Clement: Those are two different bodies. The government and the Legislature are not the same.

Mrs Papatello: Regardless, because I am personally aware of contradictory comments regarding the issue of binding or non-binding, it's going to be a very key focus of what this committee intends to eventually bring forward as proposed legislation to be discussed in the House. Correct? It is absolutely a key issue and that's why I've got to insist on legal counsel to this committee. I would like their opinion. I have to assume that we're entitled to it; that's why legal counsel is assigned to each committee, because each committee often needs legal opinions. Based on legislative research done by Mr Kaye, I would like that.

The Chair: I have a number of other people who would like to speak to this point: Mr Curling, Mrs Marland and then Mr Clement.

Mr Alvin Curling (Scarborough North): I think the point Mr Morin made in regard to the Ombudsman is a pertinent one, that while the Ombudsman committee was in operation there was permanent legal counsel on the committee, so matters that came up would maybe have been given a legal opinion. My understanding of Mrs Papatello's point is that the researcher brought about a couple of findings and presented them to us. It would be quite time-saving if legal counsel could be here to assess that and give us that direction. By the time we come to legislation, I think it would be much easier for that to be sieved out and proceeded with.

Mr Clement mentioned that we have had these legal counsel before us. My understanding was that these legal counsel who came were all witnesses. They were just giving their perspective on things at the time, not assessing or evaluating some of the research that's been done.

It's very important, Mr Chairman, that you listen; I know you're busy. We're trying to make a case here, as was said by my colleague, that the presence of legal counsel would be very helpful, especially now. By the time the legislation has been written — it would be much easier, an easier flow, for the legislation to be drafted.

Just recapping, all the legal counsel who came before us were witnesses making presentations. They were not in any way assessing research material presented to us.

Mrs Marland: The person who can probably best answer Mrs Papatello's question is Mr Arnott, the other Mr Arnott; it just occurred to me that we have two Mr Arnotts sitting up there. I think Sandra has to have explained to her the role of legal counsel as they pertain to committee and the role of our researchers as they pertain to committee work. It is coincidental that some of our researchers indeed are lawyers. I'm not going to ask Philip whether he's a lawyer because that's not the point.

He has done some research, and this is how committees function all the time.

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Now, if we have an opinion from a legal counsel, that's all it is: an opinion. We have three lawyers sitting here. I guess there aren't any lawyers there. I'm not a lawyer, Mr Shea isn't a lawyer. There is a reason for the old joke that you get 10 lawyers in a room and you'll have 10 different opinions. There's no value to the committee of having an opinion from a legal counsel unless — are we going to get six opinions and choose four?

What we're dealing with is trying to write a report on the best information available to us. We will not know how the research Mr Kaye has developed for us would stand in a challenge versus what legislation our government comes forward with until it's challenged. We're going to write a report and then the government is going to draft legislation and then we're going to go through all this again. What will be very interesting is that after the government has passed the legislation, it may still be challenged through the court, so we may still have a legal challenge where the final, ultimate legal opinion will be given.

Doug, could you explain about how legal counsel works as it pertains to committee work?

The Chair: Thank you very much, Mrs Marland. That was very helpful.

Mr Curling: Who needs that?

Mrs Marland: I think you need it. You're asking the questions.

Clerk Pro Tem (Mr Doug Arnott): The role of legislative counsel is to provide advice to committees, as I understand it, when committees are considering legislation referred to them by the House. This committee, as I understand it, does not now have legislative counsel assigned to it during its consideration of the order of the House to consider the matter of referenda.

Mrs Marland: And we're not considering a bill.

The Chair: We're not considering a bill at this time, that's correct, and we have no legislative counsel assigned to us at the present time. Mr Clement, then Mr Wildman and then Mrs Papatello, if you still wish to —

Mr Clement: I'm hoping to help out Mrs Papatello and Mr Curling by sharing with them a motion I would like to move at the appropriate time, as deemed appropriate by the Chair, to add a sentence to section 8 of my motion which would make it clear what "binding" means. We always knew that "binding" could not bind the Lieutenant Governor in Council, based on that bill as well as other decisions; "binding" in terms of binding the entire Ontario Legislature would be problematic as well. The phrase I would like to add to section 8 —

Mr Curling: On a point of order: I thought you were going to complete the presentation.

Mr Clement: Yes, and I'm going to move this at the appropriate time, Mr Curling.

Mr Wildman: He's just informing us.

Mr Clement: I thought I'd like to inform you. Based on the discussion we had last week, Mr Silipo was very helpful in that discussion in focusing the issue, as well as Mr Gerretsen. After having re-researched some of the

presentations that had been before this committee — Mr Boyer's presentation I reviewed, as well as Mr White's presentation, as well as the taxpayers' federation presentation. I was able to also review the BC legislation.

Correspondingly, what I propose in the future to add to section 8 would read, "In either case, a referendum-inspired bill would be considered a government bill and would be pursued by the government at the earliest reasonable opportunity."

This is more or less in collaboration with Mr Silipo. Mr Wildman, we had this discussion of trying to find the best language, not in a legal form, because this isn't legislation, but with the intent to bind the referendum result.

I think Mr Silipo and I came to the same conclusion, that although you cannot bind a Lieutenant Governor or the Legislature, necessarily, you can bind the government. In our Constitution, that is a different body. In fact, what you're doing is binding the executive council and its caucus.

That is what I intend to move, Mr Chair, and I hope that helps Mrs Pupatello and her colleagues.

The Chair: Mr Wildman, do you still wish to comment?

Mr Wildman: Yes, very briefly. Just as an aside, I would comment that while I agree with the member for Mississauga South's position vis-à-vis lawyers and legal opinions, I think it is fair to say — and far be it from me to defend the legal profession — that some legal opinions are more equal than others. A learned professor of law, for instance, who is expert in this particular field, is respected in a way that perhaps a litigant lawyer might not be in some of these matters. If we were seeking an opinion, there are people we could canvass who could give us their views that would be helpful.

Having said that, I think the description by Mr Clement of the proposed amendment that he will put at a later time is helpful. At that point we will get into the discussion of what "pursue" might mean and what the import of that word is, but I think that does try to deal with the constitutional question.

The Chair: Mrs Pupatello, do you still wish to speak further?

Mrs Pupatello: I don't find Mr Clement's comments helpful. The point I was raising was my becoming aware of discussions Mr Clement has had on your behalf, Chair, as to the status of the committee and where the issue of referenda is going and its time frame. Mr Clement, speaking on behalf of committee members, suggested a time frame that you are not aware of, as we spoke of prior to the beginning of the meeting. He has issued, apparently, a particular time line for our work to be completed here, none of which is appreciated by me or the Liberal members of the committee. Now, having spoken with you prior to the meeting, you too are not aware of any time by which our work is to be done.

The most significant issue regarding the issuance and the collection of a referendum is the binding nature, whether it is or is not binding. It's such a relevant issue that when communities, municipalities, towns, cities right across Ontario, that currently are in a position to hold referenda — plebiscites, whatever you're going to call

them. They currently have that power so it's certainly not new to hold them. What is new is whether there is a binding nature to it. On the occasions Mr Clement has been asked these specific questions, he has given contradictory reports as to whether referenda, depending on the issue and depending on the place, would be binding or not binding on government members.

This causes me a great deal of concern because at this early stage where the committee has not finished its discussion on points forwarded — when these 12 points were brought forward to committee, you'll remember the scramble to have them typed in time. You'll remember the horrific writing we had to suffer through because we couldn't read Mr Clement's handwriting because it was done in such a rush. You'll remember that we had to wait while it got typed. Even when we got photocopies of this horrendous handwriting — he's not going to take this personally —

Mrs Marland: You're saying it twice.

Mrs Pupatello: Margaret, you not having been here, I would only share with you that I have a copy still. It was terrible handwriting. I think he chose the wrong profession. In any event —

Mr Morin: On a point of order, Mr Chair: Hansard is not like television; it doesn't show the facial expression. I must say, when I read the last Hansard it sounded as if I were scolding Mr Clement. It's not a fact. His writing wasn't good and I meant it with a smile. Mrs Pupatello, I hope Hansard understands it's being said with a smile.
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Mrs Pupatello: I hope Hansard records a great big grin.

The point I'm making is simply that the 12 points, since they were submitted in handwriting that was not legible — the debate has completely focused on those 12 points, which I'm suggesting were written in haste. There are a number of things that Mr Clement himself acknowledges he would change if he'd had the time.

It still all comes down to one overriding issue: the binding or non-binding area of referenda when they're used. If they're not binding, we're not going to sit here at committee and discuss referenda. If they're not binding, we're not going to make any introduction of legislation to the House. If they're not binding, we're not going to spend hours researching what happens in other civilizations, in other jurisdictions and states and provinces. Clearly, the intent by Mr Clement is to introduce the notion of them being binding.

Having said that — and I don't think that's arguable. I think that's acknowledged by all of us. Your intent is that legislation will come out of this committee to be binding.

The Chair: No.

Mrs Pupatello: It must be. I know you're shaking your head and saying no.

The Chair: There's no legislation before the committee. It's a report.

Mrs Pupatello: The intent of the report —

The Chair: Excuse me, Mrs Pupatello. We're working on a motion that is to lead to a report that's going to be referred to the House and then it's up to the government to decide. I have a couple of other points I want to make.

Mrs Papatello: Are you on my point of order? Just so we know the status here.

The Chair: Is it a point of order? No, I don't think so. It's actually questions and comments related to what Philip presented earlier on.

The role of the Chair is to try to move the business of the committee forward, to call meetings and to try to bring people together. Mr Clement, who is, as I understand it, the point person for the government — if he has media questions, I assume he deals with them in the way he thinks is appropriate, answers questions, explains what the position of the government is. I don't see that there's any problem there. He explains the position of the government. I don't see that he's infringed upon the rights of the committee in any way.

Mrs Papatello: In making statements to media about the timetable of the government and its intentions for where things go at this committee, it's highly relevant to what you as Chair have to expect to follow through in a certain time frame. That's exactly why I asked you those questions.

The Chair: No, the Chair is independent. I sit as a member of the governing party, but in my capacity as Chair I'm independent of the government. I endeavour to be impartial on issues before the committee.

The government, I assume, has a time frame it's working towards on every issue it's considering doing something with. I think it would be prudent to have objectives, but I'm not aware of them, and quite frankly, I don't see it as being a big issue.

Mrs Papatello: Going back to my real issue, regarding the binding and non-binding feature of referenda, that really is the crux of the matter in this discussion. Clearly, the intent of the government in bringing this forward as a topic to committee is the eventual drafting of legislation for binding referenda. Mr Clement is nodding his head; he acknowledges this.

Mr Clement: If you're asking me what my intention is, that's my intention.

The Chair: No, there's a report that comes from the committee that recommends a course of action, assuming we can get to that point. Then the government takes the report and, assuming it wishes to proceed in some way, proceeds. They may or may not accept the recommendations of the committee.

Mrs Marland: There is another way of looking at this. The government could bring in legislation any time it wanted.

The Chair: Mrs Marland?

Mrs Papatello: The point is that this is simply —

The Chair: Mrs Marland has the floor.

Mrs Papatello: I beg your pardon?

The Chair: Mrs Marland has the floor. I recognized her.

Mrs Papatello: I wasn't finished. You interrupted me.

The Chair: Mrs Marland has the floor. I'll recognize you after Mrs Marland.

Mrs Marland: I just can't understand what we're going through here. If the government's intent was so suspicious or underhanded or whatever it is that Mrs Papatello is getting at, we wouldn't be here trying to write a report. What we're doing here is trying to write

a joint all-party report on the subject of referenda which would be applicable in this province and this Legislature.

The other way we could have done it is just have our bill drafted from the viewpoint only of the government party, and that isn't what's happening. What I find so unfortunate, and I said this last time — Mrs Papatello wasn't here last week but the week before — is that she turns this into an incredibly partisan debate. That isn't how that —

Interjection.

Mrs Marland: No, I wish, Sandra, sincerely, that you would speak to some of the people who have been around for a while who would tell you what the purpose of the Legislative Assembly committee is and what the genesis is for how we deal with any subject, whether it's how members function or services or anything. It just isn't a partisan committee.

Whatever Mr Clement says in his government role, you don't see him being partisan in here and, frankly, the NDP members haven't been partisan in here either. Everybody's trying to move something forward, and if you don't wish to be part of that, then you're introducing a completely new facet to how the Legislative Assembly committee functions. I think it's very unfortunate. Mr Wildman's just stepped out, but he's been here 21 years and I know he's never seen this committee used this way. Mr Morin and Mr Curling and I have been here 12, and I haven't seen this committee used this way.

I really wish we could move forward and just try to get some work done. You're right, I've only been on this committee three weeks, but what are we on? How many clauses have we passed? We haven't been able to make any progress. Now, if there's a difficulty on the whole subject of referenda, then the official opposition should get out what its difficulty is, put it on the record and let it stand as its opinion. But let's get on with some of the work.

The Chair: I couldn't agree more.

Mrs Papatello: Did you say you couldn't agree more?

The Chair: I couldn't agree more. It is the job of the Chair —

Mr Curling: To agree with the government.

The Chair: No.

Mrs Papatello: To be non-partisan; I think that's what you said.

The Chair: It's the job of the Chair to endeavour to move forward the business before a committee.

Mrs Papatello: Don't backpedal now, Ted.

I won't even acknowledge the comments made by the member for Mississauga South because I don't find them relevant to this discussion.

Mrs Marland: See what I mean?

Mrs Papatello: What I am saying very clearly is that the whole intent of this committee is to discuss the binding or non-binding nature of referenda. If the member for Mississauga South finds some offence in my being here, then perhaps I will come next Wednesday with all of the information and research that I personally have done in the area of referenda so she would understand why I personally have a great deal of difficulty with the way in which the discussions are going on this issue.

The Liberal Party has said from the outset that, in our opinion, referenda would be used in very certain, set forums and that they would not be abused. Since we have had that significant discussion on our part, what we have said is that you're not agreeing with some very basic principles we have. We're certainly prepared to go forward. We have since gone forward. We have gone forward to the point of discussing the binding or non-binding nature of referenda.

What I would suggest to the member for Mississauga South is that she go back and read the Hansard notes from previous committees. I will personally give you time at next Wednesday's committee to go through yet again all of the information that I was able to pass on to the members who were here during that time on what has been the problem with referenda as they have been used in current jurisdictions in the southern states and other provinces in Canada.

In bringing that kind of information forward, we have to ensure, as good, responsible representatives of the ridings we come from, that we do not make those same mistakes here in Ontario. Let me say to the member for Mississauga South that if you think I am taking this issue lightly, you are dead wrong. This, in my view, is one of the most significant pieces of legislation that could ever eventually come forward out of this Conservative government.

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I personally feel that if legislation comes forward that deals with binding referenda in Ontario, it will have a dramatic effect. Some may view that dramatic effect positively. I personally feel the dramatic effect would be quite negative on significant areas of government policy, on public policy, on significant areas like health, education, fire safety. My personal view of referendum and its use in any governmental jurisdiction is that it is one of the most significant issues that we could possibly deal with, because its effect is so widespread.

If committee members of the government side think I am joking, let me tell you I am not joking. I have done enough reading on this subject, not just since the election of June 1995. I have actively followed this issue for some time, beginning in at least the late 1970s. If the member for Mississauga South feels that I feel there's some kind of hidden agenda, let me tell you, member for Mississauga South, you're right. I personally believe there is very much a hidden agenda in this charade that we are currently going through in discussion at committee regarding referenda. I personally believe there is a whole other agenda. It is yet to be made clear as to why Mr Clement, acting, as you've said, Chair, on behalf of the government, is bringing this discussion forward. In my view, it is a sham.

In my view, the discussions we're having about whether a referendum would be binding or non-binding are very significant. When I, as an official member of the committee who sat on this issue of referenda long before the member for Mississauga South decided to come and sit on the committee as well, ask the question that legal counsel, who are typically attached to committees, would offer advice, as the clerk has suggested that is their role, it is totally in place. It is not out of order.

Since the role of legislative research is to do the investigation and to find out what states and cases have existed in the past, that is exactly the piece of information we were brought today by Mr Kaye. We were given one side and we were given the other, because what they found is that there is more than one way to look at this. There are lots of ways to skin a cat. In some instances historically, they have been viewed as legal. In other instances where it's been done, it's then been ruled out of order. Depending on what level within the Legislature, it's appropriate, it's not appropriate.

For me to sit and ask about the binding nature of referenda to our legal counsel to this committee that is dealing so exclusively with referenda is totally in order. Since I personally feel as a member of this committee that it is a major issue on how quickly we go through this, how each point — and let me remind you, Mr Chair, that the first time we saw the 12 points put forward by Mr Clement, they were not done because there was some grand, well-thought-out plan; they were scribbled together in the corner. While they felt I was blathering on about something that happened in 1976, they were scrambling to write them in pencil on the corner of that desk. That has since become the focus of four weeks of discussion on referenda. The member for Mississauga South should know what the history is on these 12 points that we are now spending hours discussing.

It is far more relevant to me if this discussion — in my view, the impact of it is huge in terms of government, good public policy. It is due far more accord than that. I would like to see and know the kind of research and thinking and thoughtful process that go into producing a 12-point plan that will become the basis for a report on the eventual discussion of referenda legislation, should the government choose to move forward with it. I know exactly what the history of these 12 points is. So when we have taken Mr Kaye's time to do legislative research to dig up all the various cases historically in Canada — we could send Mr Kaye away for 12 months and he wouldn't find all of the history and historical cases that currently exist on referenda. Don't look so worried, Mr Kaye; I'm not going to ask for that. But there is so much there, his job is to come and bring it all to us.

For me to ask now what the opinions of our legal counsel would be dealing with this issue, which is major, is totally in order. I am not prepared to take Mr Clement's view on this; I know what his point of view is. I've read about it in the newspapers. Frankly, I know what all the government's view on this is because he speaks on behalf of all of you. I'm very prepared to hear legal counsel, who should not be partisan, an understanding from them that that is exactly what all this is about, that that is the opinion of our legal counsel, that it would be binding, wouldn't be binding; based on the information that was processed here today, what that counsel would be.

Mr Clement: On a point of order, Mr Chairman: Can I ask you to rule on the request of Mrs Papatello so that we can get that behind us and proceed?

The Chair: Rule if it's in order or out of order?

Mr Clement: Rule whether the request for legislative counsel to answer a series of questions relating to —

The Chair: I already pointed out that because we are not dealing with a piece of legislation, have not been referred a piece of legislation, we have not been assigned legislative counsel, although there is a branch at the Legislative Assembly called the legislative counsel, lawyers who work for the Legislature and from time to time provide political advice on matters relating to private members' bills, drafting of legislation and so forth. I suggested that we could try to find an answer this afternoon to see if it would be proper, or indeed appropriate, for a legal opinion, but we've kind of beat that issue to death.

Mr Clement: I accept your opinion and I'm willing now to go on to the next item on your agenda.

The Chair: I have two other members who had indicated an interest to speak.

Mr Gilles Bisson (Cochrane South): I take it, Chair, we're on point number 3.

The Chair: We're not even that far, unfortunately. We're in the process of hearing from Philip Kaye, who wanted to give some information related to some questions.

Mr Bisson: In regard to this particular report? I'm not going to take too much time, but just for the purpose of the member for Brampton South, if committees from time to time do call legislative counsel before them, it's not a question of being in order or not in order; it's whatever the committee decides.

Okay, I'll hear Mr Kaye and I'll ask the question after. I had something specific to number 3, but I'll come back to it.

The Chair: Okay. We'll move forward.

Mr Kaye: Another issue that was raised last week involved citizen-initiated regional referenda with regional petition requirements, "regional" falling below "province-wide" but above "municipal-wide." As I mentioned last week, legislation authorizing citizen initiatives on provincial matters has been enacted in Saskatchewan under the Referendum and Plebiscite Act and in British Columbia under the Recall and Initiative Act.

Neither statute provides for regional votes with regional petition requirements. Saskatchewan's legislation provides for initiatives which are plebiscites only, that is, they are non-binding. Since Saskatchewan's legislation was passed in 1991, there have never been any efforts to invoke the petition process, whether the issue would be regional or not.

BC's legislation came into effect in 1995. The initiative results, as I mentioned, are binding on the government in the sense that it must introduce a bill for first reading. Although no initiative vote has ever taken place in British Columbia, the process has been invoked four times. None of the issues has been regional, the issues being: legislating a balanced budget and retirement of the provincial debt; eliminating members' pensions; separating school taxes from property assessments; and a prohibition against the hunting of bears.

I was also asked if there have ever been any provincial referenda with a regional impact. A list of all the provincial referenda which have been held is found in a paper prepared for the committee by David Pond of the legisla-

tive research service entitled Revised Overview of Provincial Referenda.

As the paper indicates, none of the provincial votes appears to have had a regional focus. There was a regional vote in Quebec in October 1987 involving 14 northern villages. The assistance of the chief electoral officer of Quebec had been requested and a resolution of the National Assembly authorized the chief electoral officer to assist the Inuit of northern Quebec in conducting the referendum, but there was no legislative framework as such. The question in that referendum involved the composition and funding of a working group which would be created to prepare a constitution for a regional assembly.

Another issue which was raised last week involved the requirement in the motion that measures proposed in a referendum comply with the Constitution, including the Charter of Rights. Accepting this requirement, the question was asked, how have jurisdictions in Canada made provision for constitutional referenda?

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In British Columbia, applications for an initiative petition must include a draft bill for introduction into the assembly. Since constitutional amendments are made by the passage of constitutional resolutions, not by the passage of bills, it seems that constitutional amendments cannot be the subject of an initiative in British Columbia. Also, in British Columbia initiative proposals must pertain to any matter within the jurisdiction of the Legislature. In that case it might be argued that if the initiative dealt with a constitutional amendment changing the jurisdiction of a provincial Legislature, for that reason also it could not be the subject of an initiative in British Columbia.

Mrs Pupatello: Excuse me for a moment. Could you give me an example of that case you just described, so I can follow that better?

Mr Kaye: An example of the BC?

Mrs Pupatello: Yes, where if the content was one which changed what the jurisdiction was —

Mr Kaye: The division of powers between the provinces and the federal level is in sections 91 and 92 of the Constitution Act. If a citizen wanted to change what subjects the province could deal with, then that would have to be done, in the end, by a constitutional resolution, not by a bill.

Mr Bisson: Could I ask a question?

The Chair: Are you finished with that point yet? Mr Bisson, go ahead.

Mr Bisson: Very briefly, the long and the short of it is that you couldn't hold a referendum question on something that would be deemed to be against the Constitution, right? For example, if the citizens of the province of Ontario wanted a provincial referendum on issues of housing, it's a question of who is responsible, the federal government or the provincial government. There's nothing that you can do in a referendum. A referendum wouldn't have to be called, right, if I understand it correctly?

Mr Kaye: Unless the referendum legislation explicitly stated that citizens could try to initiate a constitutional amendment.

Mr Bisson: Maybe I've got to back up the question. You couldn't initiate a referendum — there's no such provision in our Constitution, the way I understand it — to amend the Constitution other than by the format we have with the first ministers, the amending formula, or through other provisions. So you couldn't do it by referendum.

Mr Kaye: No, you'd have to do it by the passage of a constitutional resolution.

Mr Bisson: So the long and the short of the story is that you couldn't hold it. Even if the province here wanted to introduce referendum legislation, there is nothing in the world that would allow that legislation to give power to citizens to change something that is protected in the Constitution.

Mr Clement: Right. It has to be within the jurisdiction of Ontario.

Mr Bisson: That's what I'm saying. But even if it's within the jurisdiction of Ontario, I as a citizen couldn't ask for the province to do something in the end that would take away from my constitutional rights; for example, French-language school boards.

Mr Clement: That's right.

Mr Bisson: I just wanted to make sure I understood what you were saying there.

Mr Kaye: Regarding discretionary referenda, discretionary constitutional referenda may be specifically authorized; for example, there is federal legislation doing so and also in Alberta. Alberta also provides for mandatory constitutional referenda, as does British Columbia. It can be argued that, by definition, if constitutional referenda are specifically authorized, then they can provide for amendments to the Constitution.

Constitutional referenda have also taken place relying on general language in referendum legislation. An example here is Quebec. The Quebec Referendum Act refers to a referendum on a question approved by the National Assembly or a bill adopted by the National Assembly.

The final issue raised last week where research was asked to do further investigation involved the concept of a referendum council, consisting of justices, which would rule whether the referendum question was in compliance with the Charter of Rights and the Human Rights Code. This council would also approve the final question in the referendum. A concern was expressed about a legal opinion given by the court system, ie, this referendum council or commission, when that system might have to deal with the issue in the future.

I looked at the referendum legislation in the other provinces and the only province which provides for a referendum council or commission is Quebec. The referendum council established by the Quebec Referendum Act consists of three judges. Under the act, it has exclusive jurisdiction to hear any judicial proceeding relating to a referendum and to the application of the Referendum Act.

Mr Bisson: I'll let you finish, but after that I want to ask you a question.

Mr Kaye: Okay. The legislations says its decisions are final and without appeal. However, an appeal does lie to the Court of Appeal of Quebec on a question of law from a decision of the referendum council regarding recounts

or the contesting of the validity of a referendum. As I mentioned, in Quebec the question for the referendum is approved by the National Assembly.

Those are the issues that were —

The Chair: Mr Bisson, you had a question?

Mr Bisson: Specifically, for the last part of the Quebec model, that doesn't mean to say that the final court of appeal, when it comes to what constitutes a question on a referendum, would be that body. Certainly, if I think my rights are being aggrieved and things are being done opposite to what is protected under the Constitution, I'd still be able to go to another court, right? I'm just curious on that particular point.

Mr Kaye: It would be a question of what you were seeking pertaining to the application of the Referendum Act.

Mr Bisson: Yes. But let's say that if I as a citizen of Quebec feel those actions, whatever they are, are against my constitutional right, wouldn't I then have the right to go to a court and have that heard in the court in order to overturn? How do you protect somebody's rights under the Constitution under that model? That's what I'm wondering.

Mr Curling: The referendum would take it away.

Mr Bisson: The referendum, in effect, could take away what would be a constitutional right, if I understand correctly what they have done in Quebec. Am I reading that wrong?

Mr Kaye: I'm not that familiar with the operation of this referendum council.

Mr Bisson: What does a council do, exactly?

Mr Kaye: The legislation says very little about its powers. There is this general provision. Let me quote from it. The referendum council is established in section 2. It is composed of three judges of the Court of Quebec and then in section 3 it says: "The referendum council shall have exclusive jurisdiction to hear any judicial proceeding relating to a referendum and to the application of this act. Its decisions are final and without appeal. However, an appeal lies to the Court of Appeal on a question of law from a decision rendered by the council by virtue of sections 41 or 42." Those sections deal with recounts or someone who's contesting the validity of the referendum.

Mr Bisson: The reason I raise it, one of the things I wanted to speak to, was point 6. I wouldn't want to be in a situation with referendum law where you've got some sort of a body that's appointed by the government, and I don't mean to be combative towards the government, but let's say in the case of Quebec, who picks the judges? Right? It's the government that picks the judges.

Mr Clement: Federal government.

Mr Bisson: No. But the point I'm getting at is that either way —

Mrs Papatello: — appointed to that commission is the —

Mr Bisson: I see, appointed to that commission are provincial judges. Am I correct?

Mr Clement: No, they would be federally appointed judges.

Mrs Papatello: Federal judges.

Mr Clement: Judges to the Supreme Court of Ontario are appointed by the federal government.

Mr Bisson: In the case of the Quebec model, are those provincially appointed judges or federally appointed judges?

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Mr Kaye: I believe they would be federally appointed. It just says "of the Court of Quebec." If it said "Superior Court," then they would definitely be federally appointed.

Mr Bisson: That's why I'm wondering. What I thought I heard was that they were from the Court of Quebec.

The Chair: Appointed by the feds.

Mr Bisson: Appointed by the federal?

Mrs Pupatello: Can I interject with a question?

Mr Bisson: Let me just finish the point I'm getting at. The only caution I would raise is that I would not want to be in a position where as a citizen I don't have the right to appeal something I feel is happening in regard to my rights under the Constitution. Even though they're federally appointed judges on that particular commission, governments appoint judges. They can bring their own bias to a particular thing, and what you almost need to have is the ability to go to a court outside of the process to make sure that indeed your rights are being protected under the Constitution. I just raise that as a concern.

The Chair: Mrs Pupatello, you had a question.

Mrs Pupatello: The appointment of the judges to that commission in Quebec: The judges are appointed federally but the appointment of those judges to the commission would be done provincially. Is that correct? The intent of Mr Clement for the commission here in dealing with referenda is certainly not to have the federal government appoint these individuals, whoever they might be, to a commission. That would be a provincial appointment. So I'm suggesting that example is what is currently happening in Quebec as well.

Mr Kaye: That the judges are federally appointed but they're actually provincially appointed to the council?

Mrs Pupatello: Is that the case? That's my question. Are you saying yes?

The Chair: I'm assuming that's the case. I don't know that to be the case.

Mr Kaye: Section 2, when it provides for the establishment of the council, says a council is established, it is composed of three judges of the Court of Quebec, one of whom is the chairman designated by the Chief Judge of that court. It doesn't say in section 2 how they're appointed.

Mrs Pupatello: I wonder if we can find that out.

The Chair: Perhaps we could find that out for the next meeting. That's possible.

Mrs Pupatello: Also, the contents that you have on the Quebec commission, can we get a copy of that?

Mr Kaye: The Quebec legislation?

Mrs Pupatello: Yes.

Mr Kaye: Sure.

The Chair: Mr Curling's next.

Mr Curling: Quickly, when you come to section 6, just to put you on notice, Mr Clement, who is so familiar with most of this, and Mr Kaye, I would still have some questions about whether that somehow will take away

some of my constitutional rights. I know that this commission will make that decision, but there is some kind of fine line in itself. I won't bother to pursue the question now. It's some concern I have, and if that could be addressed when you come to number 6, to say how that will be dealt with, because what I'm hearing now is that in the Quebec model there is no appeal, the decision is final.

Mr Clement: I haven't suggested that. If you want my personal opinion, I think it should be —

Mr Curling: No, I didn't say you suggested that. I said, when we come to that, those are some of the questions I have and then you can inform me more about —

Mr Clement: I think I'm with you on that. I think it should be appealable. I agree.

The Chair: Mr Curling, just to advise you, at last week's meeting the committee went through their discussion on point numbers 1, 2, 4, 5 and 6 and we thought the committee had concluded with number 6, if I'm not mistaken.

Mr Curling: Again, it's my ignorance. I wasn't here, but I still have some questions in that regard. They can be raised later on through that, and I think Mr Clement understands what I'm talking about.

The Chair: All right. Philip, you're finished now?

Mr Kaye: Yes.

The Chair: I would like to move now to discussion on point number 3, which is a point that was set aside, as I understand it, last week. I'll read it again, just to start off the discussion:

"Citizen initiatives shall be initiated, whereby citizens may mandate a referendum to be held, within reasonable time or in conjunction with a municipal or provincial election, upon receipt by the Legislature of the signatures of not less than 10% of the citizens of Ontario, such petition having been submitted within 180 days of its initiation."

Discussion? Would you like to lead it off, Mr Clement?

Mr Clement: It's a matter of record in Hansard what my comments were, as well as the comments of my colleagues at that time. I believe this item was held over because Mr Silipo had an amendment he wished to pursue that had been tabled at that time. I believe the position of my caucus colleagues was articulated at that time, and I will not repeat that. As you know, Mr Chair, this side spoke out against Mr Silipo's amendment. I think that is still the position of my caucus colleagues, and we are waiting for the vote.

Mr Bisson: For my benefit — I wasn't here yesterday; it's unfortunate that I'm not a regular member of the committee. For what reason would you not agree to the introduction of the ability to conduct the referendum on a regional basis?

The Chair: Would you care to briefly summarize the government's position?

Mr Clement: I shall endeavour to do so, Mr Chair. I believe I made a couple of points during the discussion of this motion, first that I had difficulty — just as I would have difficulty in the present chamber of the Ontario Legislature if, for instance, a matter pertained to

the 416 area code but was provincial legislation and only the 416 members of the Legislative Assembly would be able to vote on that. I would have similar difficulty if only a particular region, on provincial legislation, would vote and not the rest of the province.

There are frequently cases, Mr Bisson, where something might apply to a particular region but it is of provincial consequence. Many of the things that happen in your community affect me in my riding and many of the things that happen in Toronto affect me in my riding. There's a lot that connects us and weaves us together, being the fabric of Ontario.

From our perspective, we felt that if the matter is before the Ontario Legislature, it is an Ontario referendum. If the matter is of the exclusive jurisdiction of the municipalities, it is quite appropriate that it be held within that municipality.

Mr Bisson: I'm afraid I don't agree with you. A number of issues affect us in different regions of this province that are creatures of provincial legislation. If you're going to go the route of referendums, I think you need to make sure the referendums work for the people affected.

I don't want to get into a debate on the Metro city, but I think it's a good example. The provincial government wants to go down a particular route, making the city one big city here in Toronto. Although the legislation is created by the province, people in Timmins or people in Kenora or people in Sarnia or wherever it might be are probably less concerned about that issue than the people of the city of Toronto.

I would hope that if you do bring your legislation forward, if you're going to go the way of referendum, you allow some mechanism for the people within an affected area to deal with what is primarily provincial legislation. I understand what you're trying to argue, that we're all in the same province and, one way or another, we're all affected. I guess "to different degrees" is the answer I would give.

I'm especially concerned about what it means to places such as northern Ontario, where the population is a lot smaller. You have far less than a million people in northern Ontario. As compared to the rest of the population of Ontario, that puts us in a fairly difficult situation, to say: "We, the people of northern Ontario or north-eastern Ontario, want to petition the government to have a referendum on a particular issue that affects us."

Although I'm not a big fan of referendums, I agree on the basis that we need to modernize our democracy in some ways; that's something that I think is long overdue. I would hope we do things other than just referendums, such as the reform of Parliament itself. But if you're going to go that way, it seems to me that you have to have some provision to allow people in the regions to have their say when it comes to particular issues that affect them.

1710

Mrs Marland: Mr Chair, am I next? Thank you. I've been sitting here trying to decide whether to register on the record my concern. I've decided I will. I want to register my dismay at the outburst of Mrs Papatello and her personal attack and comments directed to me. I can't

imagine, when a debate is taking place, that anyone would be so totally out of control. The Hansard will show what comments were directed at me, and personally.

There is a standing order that does not permit a member to impugn the role of another member. The suggestion that I should go back and read Hansard about her research into the subject, suggesting that anyone else on this committee, including myself, has not done any research or has not had the ability to do the extensive research she has done is frankly quite amazing, and I personally found it very insulting.

I will not say anything further, although there are other things I would like to say, but I will not get down into that level of discussion. I am very upset about that particular shouting and yelling, which I have never, ever experienced before on any committee.

The Chair: Thank you, Mrs Marland. I have Mrs Papatello next, then Mr Curling and then Mr Bisson.

Mrs Papatello: May I express for the record that while I may have a tendency to raise my voice in terms of being expressive, that by no way constitutes shouting and yelling but is probably more a function of my genetic makeup than anything else.

The member for Mississauga South shouldn't take my remarks personally. However, I would remind her that had she gone through and read the Hansard from committees of the past on this issue, she would clearly know the serious intent with which we intend to discuss and debate referenda in Ontario. By no means would we think this frivolous.

I personally won't accept the suggestion that my inquisition in terms of legal counsel on the area of binding or non-binding is not relevant. It is the most relevant thing. It's unfortunate if she doesn't follow my argument on the significance of the binding or non-binding nature. I can't help her with that in terms of following it. I know the Chair does follow my intent with that. I'm going to wait and probably speak after committee about the whole issue of whether legal counsel will be available to us, because I think that is significant.

I want to speak to item 3 in terms of 10% of the citizens of Ontario. I ask the government members specifically about the arrival at the 10% level. I'd like to have here the rationale for how they ever arrived at the 10% level. The member from Timmins also mentioned —

Mr Bisson: Cochrane South.

Mrs Papatello: Sorry. Having been to your constituency in Timmins, you see why I do that.

Even though the member for Cochrane South mentioned the regional aspect of it, I'd like a fuller discussion and rationale on the 10%. One of the most obvious points about that discussion, or at least the expected answer, is that with the population centred in the GTA of a certain number of millions and its percentage in contrast to the rest of Ontario, the dangers are very obvious and apparent. But I would like to have a much fuller explanation.

Mr Clement: I'd be happy to respond to Mrs Papatello's question. I would refer her to Revised Summary of Recommendations prepared by Mr Kaye; my copy is dated November 1996, which is some months ago now. I would refer her specifically to pages 9 through 11, which summarize the deputations that were before this

committee. Some of the deputations before this committee recommended a 3% threshold, some opined that a 15% threshold is necessary, but a great number of them recommended a 10% threshold.

Those were the ACFO, AEFO, Mr Radiff, the Canadian Taxpayers Federation — I'm going on here — the Brampton Taxpayers Coalition. Mr Mitchell commented on British Columbia, which is at 10%, although I concede it is much more onerous because it is riding by riding. There were a number of deputations that recommended lower than 10%, a number that were higher than 10%, but my reading of the deputations was that the consensus seemed to be 10%. That was also the consensus of the NDP caucus and the Progressive Conservative caucus.

Mrs Pupatello: A question?

The Chair: A quick follow-up question.

Mrs Pupatello: I'm looking for Mr Clement's explanation, not a summary of the presentations before the committee. I'm asking the member for the rational explanation in terms of why he chose to write number 3 as such, at the level of 10%. I'd like to hear his explanation of why 10%, how you get around those issues of such a commanding lead in terms of numbers in an area like Toronto versus the balance of the population in Ontario. If you have two million people in Toronto, you're hitting more than 10% just with that population.

Mr Clement: But not all those people are voters, first of all.

Mrs Pupatello: In the GTA, say, two million might be the voters. I don't want to hear what they said. What I want to hear is, from what they said and what you were presented with, what points did you pull out in order to arrive at your 10%?

Mr Clement: I would say that we, as the government side, are always trying to find a reasonable approach, and consequently it occurred to us that a threshold of 10% adequately and reasonably represents a threshold which is not so low as to encourage those who wish to pursue frivolous petitions but not so high as to make the whole idea of referendums so onerous that they would never occur. Based on the literature of the experts who have studied this field, based on the deputations before this committee and based on the consensus of the NDP caucus and the PC caucus, 10% represents a reasonable threshold which is neither too onerous nor too easy.

Mrs Pupatello: Could you comment on the regional issue again, then, as it relates to the 10%. How do you avoid it becoming specifically divisive or divisible along a regional line?

Mr Clement: I guess some people view Ontario as regions, and there are regional disparities and regional differences that we like to celebrate, but we are all also Ontarians. The view of our caucus was that we should not try to divide our province into regions, that we are all Ontarians with equal rights and obligations, and to seek to divide into thresholds for the regions would not be conducive to the way we run our democracy. The way we run our democracy is that we are all equal Ontario citizens.

Mrs Pupatello: Can I continue on this line of questioning?

The Chair: Two of your colleagues would like to ask questions, if you want to concede.

Mrs Pupatello: Sure.

Mr Curling: I want to pursue my colleague's question. You say you don't want to divide Ontario into regions. We are regions in different ways. It's nice to draw lines and boundaries, but when we get deeper into it we find that we have to draw boundaries.

Let's look at things like the building code. If we ever conduct ourselves with one type of a building code across the province with the same standard, in some places it would be impossible to build with the costs. There are many issues where you could not just look at it and say that one type of a referendum will govern all Ontario. That's why we have to be sensitive.

Referendums most of the time come down to be regional; most of this stuff will be regional. You cannot govern in the north the same way you govern in the south, or govern in the city as you govern in the rural areas. Even your government has admitted that. Even as you draw up the megacity, you're saying the megacity is different; that the six or seven different governments we have here — not different governments, but regions — can be just one, but you would not do it all over Ontario. My concern is about that part of it. One has to be very sensitive about some of the questions we raise, that it will put some people outside the directions the referendum will go.

I want to go back just to emphasize what Mrs Pupatello had stated about the 10%. I find it rather excessive, in a way, that 10% of the voting population, as you said, will constitute the legitimacy of a referendum. In Manitoba, as you know, they had an 8%-to-5% type of situation. If we look at the record of even voting some time, we can see the kind of turnout we have and the difficulty in organizing it. If we have a referendum, looking at the situation in the north, just the proximity and the movement of getting all these petitions and all these other things organized is a pretty high percentage that one calls for.

1720

I think if you come forward with a percentage, you really have to justify it. Just saying, "We didn't want it too easy, we didn't want it too hard," who is the "we" saying that 10% is not easy or hard? You have to be sensitive to the regions and even to the questions you're asking and who will respond to them. I have great concerns about those two things too, the regionality of it all and the percentage of people who will vote.

Mr Bisson: I don't want to belittle this particular point but I want to come back to it because I think it's important.

The government wants to give the impression to people of Ontario that it wants to allow for more participation in our democracy, and I think that's fine. I think we as New Democrats don't argue; we believe that democracy is not only words but also actions, and we need to give citizens the tools by which to make this happen. As I said earlier, this is not my preference of how you make that happen. I'd much rather see far bigger changes and parliamentary reform before going to a referendum. I would see a referendum as a second step towards doing the kinds of changes.

If you're going to do this I've got to come back to this particular point: Let's say in northern Ontario we have a huge issue around the government, as we speak, privatizing water and sewer treatment plants across Ontario. That's probably not a good example, actually, when I really think about it. Let me get back to transportation. Let's say there's an issue with regard to transportation in northeastern Ontario that northerners are really upset about and want something done. Under this particular legislation it would be fairly difficult for northerners to be able to exercise their right to get a referendum to try to address that particular issue, because within 180 days we'd have to go out and sign 10% of the voting population of the province, which I'm told by Charles is 6.2 million people. So do some quick math on that — 6.2 million or 6.6 million?

Mr Clement: It is 6.6.

Mr Bisson: Okay. Charles, you were wrong. It's even harder. It means that within 180 days I've got to organize my committee, and from the first person signing that petition I have to get 660,000 people to sign the petition. First of all I can't do it in Timmins; that's the point I'm getting at here. I've got to get 660,000 people to sign that petition within 180 days of the first person who signs and I have to assure myself that the 660,000 are actually voters within Ontario. I'm not going to get into that. You recognize the problem there is in associating, is this person a voter, are they of voting age, is it a resident, is it a non-resident? It would be almost impossible, in the case of northern Ontario, to be able to do that.

I say to the government that if you're going to go this way, if you're going to say, "We want to give the voters, the people of Ontario, not only the feeling that they live in a democracy but give them some tools so they can actually participate in that democracy," it seems to me that this particular suggestion under point 3 is very limiting. If I were living in Metropolitan Toronto, I'd probably have an easier time of trying to get a referendum question on than I would if I were living in northern Ontario is the point I'm trying to get at.

I hope the government would revisit and rethink the amendment the member for Dovercourt brought forward. The reason we're asking to have some amendments around the regional issue is for exactly that particular issue: Depending on where you live in the province, the way this is put together, I think you're going to get treated a little bit differently when it comes to the results of who can get a referendum and who cannot.

The Chair: Did you have further questions?

Mrs Papatello: Yes.

The Chair: I still have Mr Wildman next and then I'll recognize you, Mrs Papatello.

Mr Wildman: I apologize for not having heard the rest of this debate. I had to attend a subcommittee meeting of the social development committee around Bill 104.

Mr Bisson: Is the committee coming to Timmins?

Mr Wildman: No.

Mrs Papatello: Is it going to Windsor?

Mr Wildman: Yes.

Mrs Papatello: Do you know what date?

Mr Wildman: No. I'd be happy to report on that subcommittee to you.

I hope the government members would consider very seriously this amendment. It's put forward in good faith. It's a serious amendment. It seems to me there are local regional issues that are not of interest across Ontario but are of very significant importance to people living in a particular area of the province. It would seem to me that where such an issue is relevant to a particular area, then this amendment would apply.

You could think of many. I think of one that I understand is being initiated in British Columbia right now under their rules, which are far more stringent than this, on bear hunting. I understand the problem involved, because some people would say that really is a BC interior issue, that it really doesn't apply in Vancouver or Victoria. On the other hand, there would probably be many people who enjoy the outdoors and who are environmentalists or outdoors people or naturalists who would say: "No, people in Vancouver should have a say in this kind of referendum. It shouldn't just be people who live in the BC interior, in the mountains, where you might encounter more bears than in downtown Vancouver."

I think there are specific issues — actually, I was going to say the BC stock exchange is probably bullish, not bearish. At any rate, I think it is important that we give the opportunity for local areas to deal with issues that are of specific importance. We already do municipally, and this has been long established, as has been testimony before this committee on a number of occasions with regard to questions like fluoridation and whether there will be licensed establishments that can serve liquor in a particular community. We have many precedents for allowing for local referenda in those situations. Those are not usually initiated in the same way we're talking here.

I hope people on the committee would consider this seriously, the 10%. Sure, the number is arbitrary. It follows the 10% that is proposed in the government discussion paper or at least in the points listed here. There were different numbers listed. But I hope this can be considered seriously.

The Chair: Next I have Mrs Papatello and after that Mr Johnson.

Mrs Papatello: I wanted to give Mr Clement a very good example of a disastrous effect of using referenda on an issue in Ontario, given the levels that you're proposing. For example, historically the issue of Temagami. Temagami is a river, but Temagami forest is probably one of the very good examples we can use in how something like a 10% population centred around the Toronto area or the GTA would have a significant impact on other parts and other regions in Ontario, where the population in the north would have a significant amount to say on that issue but would never have the population to prevent or get a majority voting no or a majority voting yes, depending on what the question was.

1730

Governments have fallen and been built over the issue of the forests in the north. All of the environmentalists, as one of our members of the committee will know, many thousands are centred around the GTA and they have a lot to say about forests in the north. People who live in the north, who make their bread and earn a living for

their families, have a lot to say and have a significant amount to lose or gain by what the people in Toronto have to say about their forests.

I probably don't have to explain to many of the members here what kind of divisive issue is the saving or not of forests in the north. I'll tell you that based on this, a citizen-initiated referendum on cutting trees in the north will probably always fail if the question relates around, "Don't cut the trees." The answer will always be, "Yes, don't cut the trees." If the question is, "Yes or no, should we save the forest?" "Yes, save the forest." The majority of the population of those who are going to be most concerned over that issue will be based in southern Ontario.

Those in the north — and I'm going to guess for the people in the north; Mr Bisson will probably comment further — certainly weigh how critical the environment is to their northern economic development, but the people in the north have to understand they need a balance in terms of what policy there will be: How many trees can they cut? How much of a living can they make? What kind of reseedling must occur? What kind of laying bare the acres for a certain number of years, or fallow, or whatever you want to call it, to make it relevant for further reforestation of the north?

Are you allowed to build a road through the forest? Should you not build a road in the forest? If you build a road, what else is going to come to the north? Should Bob Rae chain himself around a tree trunk again or not?

Did it fail a former government over this issue? Absolutely. Had this legislation been in place, the environmentalists, who seem to be certainly based in Toronto, could easily have swayed the change. Should the people who are environmentalists in the Toronto area only totally make the decision on behalf of government whose job it is to see that justice is done for those who need to save the environment, for those who need to have an economic development plan for the north? This is the perfect example of why the 10% will never work. You must have something ingrained in this that allows for the regional disparity.

Mr Clement is now on record having the position about voting and the representation that a vote should have. I would suggest to Mr Clement that he remember the debate in the House around Bill 81, which was the redistribution bill or the insulting Fewer Politicians Act. I was always surprised why Ms Marland, who gets insulted on a very regular basis, wasn't offended by the entitled Bill 81, which was the fewer politicians, which should be of great offence to every politician who takes their job seriously.

At that time, during the debate of Bill 81; I personally had the opportunity to debate the minister, who at the time was — what was Johnson minister of at the time?

Mr Curling: Management Board.

Mrs Pupatello: Management Board. He was following through; he was the one who was carrying that bill. We had a great discussion around representational voting. What Ontarians have recognized for years, and the NDP caucus knows full well, is that you could actually elect a majority government based on 37% of the popular vote. I would say that the BC New Democratic Party has

figured that out in their latest provincial election, where Harcourt won with less. What was his percentage? Clearly Ontario and BC have never had one man, one vote, and they haven't done that for a very particular reason.

Mr Wildman: There hasn't been a government in Ontario that won with more than 50% since 1945.

Mrs Pupatello: Exactly. And the reason those governments are allowed to be elected with less than 50% plus 1 is because we don't have one man, one vote. You could actually have the case where a party has more votes individually but fails to form a government because we don't have one man, one vote. That leads to Mr Bisson's comment. We have representational numbers here that some ridings have constituents of a greater size and others do not. Mr Palladini, I believe, has the largest, some 120,000 people in his riding, compared to one of the northern ridings which may only have 10,000, yet the vote counts for more if you're from the north.

Ontario's history has led us to the development of votes being weighted depending on your geographic region. That's the whole point. When Minister Johnson brought forward Bill 81, he acknowledged that by changing the number of ridings, hence changing the number of representatives, one per riding, who would come to Queen's Park, he was changing that geographic representation. He said it was moving closer to one man, one vote. But it is never going to be one man, one vote. Until each riding has exactly the same number of citizens as the others, we're never going to have one man, one vote.

We don't have one man, one vote for a very good reason: because it's not fair. Conservative governments have acknowledged this; Liberal and NDP governments have acknowledged issues like northern forests. You cannot be driven simply by population, and governments have made significantly unpopular decisions on issues like environment in which people in the north are gravely affected or people in the south maybe aren't as affected. People who are elected to make those decisions make them based on what the right thing is to do. Don't make decisions based on who carries the most weight.

In pointing out this basic, most general flaw in the philosophy that is driving this — in my view number 3 is certainly one of them — I don't know if we can proceed until we correct the flaw. There is a basic flaw in philosophy that, as Mr Clement has admitted earlier on in discussion, is that equality in numbers, and that's how he's rationalized leaving it at 10%. If that were true, then Ontario would have one man, one vote, which we do not and which his government has argued we should not have in Ontario.

Mr Ron Johnson: I am just going to be very brief. Although I agree with some of what Mrs Pupatello said — she indicated the regional nature, and I understand that — at the same time she indicated, using Temagami as an example, that Temagami itself will have an impact right across Ontario. Her own words said that it would have a significant impact on the people across the rest of the province.

I would argue that even though Temagami may be a regional issue, the interest of that regional issue has

province-wide implications and the results of a referendum would have province-wide implications. The problem with Mrs Papatello's argument is its fundamental basis that the rest of the province wouldn't fully understand the issue. I reject that. I think that in a regional issue such as Temagami, as an example, there would be enough interest in Temagami generated, say, in Metro or in Brantford, which I represent, and people would understand and learn the issues and make appropriate decisions, whether it be in a referendum or not.

I think the premise on which she makes her argument, that it's a regional issue and only those who live in the area will understand the impact or the issues, I think is false. I think the people of Metro could have some very strong feelings about Temagami if there was a drive to summon up 600,000 signatures for a referendum and it has province-wide implications.

Before we need to look at regional referendums, I struggle to find an issue of provincial jurisdiction that is regional in nature that won't either have province-wide implications or set a province-wide precedent. If it has province-wide —

Mr Wildman: In that case all of us should be able to vote on the megacity.

Mr Ron Johnson: You're in the Legislature and you're going to get to vote on the megacity. You're the representation.

Mr Wildman: No, but I'm talking in terms of referendum.

Mr Ron Johnson: The bottom line here is that if you've got an issue that is — and I can't come up with one that doesn't have either, like I say, province-wide implications or that doesn't set a province-wide precedent in other communities. For example, in Brantford there was an issue over privatization of Hydro going under the municipality. If that were allowed to proceed —

Interjection.

Mr Ron Johnson: Not really. If it were allowed to proceed right away, even though it's a local issue under provincial jurisdiction, it would set a precedent right across the entire province for all municipalities. I think that it would therefore —

Mr Wildman: Even if the other municipalities have referendums.

1740

Mr Ron Johnson: Sure, but it would therefore be fair to suggest that if referendums under provincial jurisdiction are initiated by a region, I don't know that you're going to find a particular case where those referendums wouldn't have province-wide implications and that therefore the province as a whole should be involved in the referendum process. I think it takes it out of the regional issue.

Mr Bisson: I come back to the point that here we are trying to find some recommendations for the government about how we allow people to participate in the democracy by way of referendum. I think we have a good example here of how our parliamentary system itself needs to be reformed, because what you've got is government members who defend their particular line — and I was there. I don't demean it; I understand it. The government members defend their own particular line, which is

that they want referendum legislation that's fairly tough to enact because they recognize as a government that referendums could be a problem to a government.

On the opposition side, you have I think two arguments. The New Democrats agree partly with the government about trying to find a way to upgrade our democracy so that it works better, and the Liberals are taking a different line in opposition to it. It seems to me that part of what we really need to do, if we want to make democracy work, is to change how Parliament works. I think that's one of the biggest problems we see here.

Specifically to the point of the 10% that we're discussing in this particular section, let me just say this. I don't want to belittle it but I really have a hard time trying to figure out an issue where something that would be affected in northern Ontario, something of importance to northerners, that we would be able to win by way of referendum with the rest of the population of Ontario. The reality is that most people in southern Ontario couldn't give a darn. It's not because they don't like us; it's just because they don't know. Most of them have not been there, they don't understand what the issues are and they have other issues on their minds that are more important.

I look at myself as a northerner. Let's say this legislation is in place, this particular clause is in place, and we say we want a referendum on a particular issue that affects something that's specific to northern Ontario. We don't have 10% of the population in northern Ontario, so by its very nature we're behind the eight ball. If we ever want to get a question on the ballot, we don't only have to get 100% of the voting population of northern Ontario to agree with us, we have to go outside the jurisdiction of northern Ontario to try to get other people in the province to understand and buy into the question we're trying to place on the referendum. By its very nature, that's difficult.

I think the government needs to recognize that if you're going to go the way of referendums and you don't want referendums being used just sort of willy-nilly, raise the threshold but at least allow regional referendums to happen. If you're worried that you don't want referendums happening every day of the week and all kinds of people signing petitions, raise the percentage above the 10% and say you need 20% or 25% or you need a shorter time span or whatever safeguards you want to put into them. But you have to allow people in different regions of the province to deal with their issues in a way that's equal to others so that we're all treated equally.

On the flip side of that, the member for Windsor-Sandwich had raised the issue of Temagami. I think a better example is the whole issue of the garbage in downtown Toronto and Metropolitan Toronto. If there were a provincial referendum to be held to allow garbage to go to northern Ontario, my guess is that in the region of Toronto, which is some 2.5 million people, three million people, it would probably pass. You can get 10% of 660,000 out of the population of the GTA pretty quickly compared to northern Ontario.

By its very nature you would end up in a situation where people in the GTA would be able to enact a referendum a heck of a lot easier than people in the

north, and we in the north would be adversely affected because there's no way we could raise any kind of opposition to that with the mere 8% or 9% of the population that we have in northern Ontario. You need to look at the regional issue a little more clearly.

We spoke a bit earlier of how we need to make sure that if we go the route of referendums, people's constitutional rights are protected and people's rights under the Human Rights Code are protected. That's the first thing.

The second thing you need is to make sure, within the preamble of the law, that people are protected in regard to their general rights that may not be protected directly in the Constitution, so that we don't have referendums doing things like forcing Metropolitan Toronto garbage to go to northeastern Ontario, to a community called Kirkland Lake or Timmins or wherever it might be. You'd have to spell that out in some way within the preamble of the law.

The last thing is that you need to have some way of dealing with the regional issue. I'd be prepared to accept some sort of amendment by the government that would say we'll raise the threshold, we'll make it more difficult to enact a referendum in order to give people the ability on a regional level to deal with the referendum question.

Mr Wildman: I think my friend from Cochrane South raises a very good issue. I understand the position taken by you, Ron, about Temagami being of province-wide interest. But as Gilles just indicated, in a province-wide referendum like that that has significant ramifications for northern Ontario, the north will almost always get swamped. That is very worrisome.

The example he raises about Metropolitan Toronto's garbage is a very good one. I think it would be very valid for the people of Kirkland Lake and the surrounding area to have a referendum about whether they wish to receive Metropolitan Toronto's garbage. To argue that has ramifications for Metro so therefore Metropolitan Toronto should be able to vote on that as well, I think is most unfair and would inevitably mean that the people of Kirkland Lake would be swamped in such a referendum. Most people in Toronto would say, "Yeah, that's a great idea."

You might argue, for instance, that the preservation of farm land in southwestern Ontario is not just an issue of importance to the farmers of Niagara and the other farmers in southwestern Ontario but that it's of significant importance for everybody in Ontario. I think that's a legitimate argument, but I think that people in those areas would argue they should have a little more say about what happens to the lands in their regions than the people in Kenora.

Mr Bisson: Or Moosonee.

Mr Wildman: Yes.

I'll give you another example. This may be a little more extreme, but I don't think it's unfair. Under the Constitution of Canada and the laws as they've been interpreted by the courts, the aboriginal people on the James Bay coast have the right to hunt geese. Nobody else has the right to hunt geese outside of a very restricted season. There are many hunters in the province, non-native hunters, who think this is very unfair. It's not that they want to be able to hunt geese outside of a

restricted season; they don't want the natives to be able to. So they might initiate such a referendum.

I think that question then might be caught by the discussions you've had under the Charter of Rights and Freedoms and how that might be interpreted. But if it weren't caught that way, then you have a very small population, scattered population, along the James Bay coast, with — what? — seven or eight communities, and you might have a tremendous campaign not just among hunters in southern Ontario, but naturalists, environmentalists and so on, who would say that in order to preserve the geese numbers, we should limit this right of a very small group of people living almost a subsistence way of life on the James Bay coast.

That's just not fair, in my view. I think we have to be very careful in characterizing issues as always being of provincial interest when in fact they have significant ramifications for a particular region or community.

1750

The Chair: I have Mr Johnson on the list as wanting to speak next.

Mr Ron Johnson: I'm going to be brief. What we're back to is the regional issue, and I would ask you to give me an example, because I don't know that you can come up with one.

Mr Bisson: Garbage.

Mr Curling: Building code.

Mr Ron Johnson: In my understanding, and I stand to be corrected, there might not have been a referendum but the local government of the day in Kirkland Lake made some sort of decision as to whether they wanted to take that garbage or not.

Mr Wildman: Then you can't argue on the one hand in favour of a referendum and on the other hand against.

Mr Ron Johnson: I understand that, but it's as much a local issue as it is a provincial one. That's my point. But I ask you to give me an example of a regional issue that has provincial jurisdiction, in the north, for example, that doesn't either have provincial-wide implications or set provincial-wide precedent, because if it does set provincial-wide precedent or have provincial-wide implications, then the province as a whole should be involved in any referendum process. I understand what you're saying; I just happen to disagree because I don't think there is a local issue that will fall within the parameters that you define as being — as I define, I guess — out of the precedent-setting parameters for the province.

Mr Wildman: Land use in Niagara then should be decided by a province-wide vote?

Mr Ron Johnson: It would depend on whether it was municipal —

Mr Wildman: In order to preserve the fruit lands.

Mr Ron Johnson: Local municipalities can hold referendums if they want, to get input.

Mr Wildman: But the point is —

Mr Ron Johnson: It's a local issue. You're talking about provincial legislation.

The Chair: Excuse me. Mr Johnson, you have the floor.

Mr Wildman: There's provincial legislation to protect fruit lands.

Mr Bisson: Who's next here?

The Chair: Next I have Mr Curling and then Mr Bisson.

Mr Curling: Mr Johnson, let me just respond to that in another way, because I think Mr Wildman and Mr Bisson made some excellent points. Let me use the building code, for instance. When the government wants to change the building code, there's always an argument about what kind of standards we should have. Because of my experience as a Minister of Housing, I realize how complex that is.

Many of the builders in the south would like to reduce the building code for some requirements on how to build, especially for insulation and what have you. They would like it to be less stringent because the fact is that the cost would go down. If we only listen to the southern people — in the north the building code cannot be the same as in the south. The fact is that some people's interests are just because of costs and they could make a profit. If there was such a referendum that came about to say we should drop some of the standards, I think the south would just clobber the north on this; not sensitive enough to know what's happening in the north.

The fact is that governments, which must protect minorities, must have a responsibility to almost say, "No, this cannot go on like this." In other words, one million persons, which would make roughly the 10% of what is required to have a referendum, could easily be gotten in a third of the population of greater Toronto. If they want to stop that, to vote no against that, they would have to get the entire north and beg maybe Windsor or somebody, "Please come along with us." They could never win. Therefore, the regional factor, the climatic conditions and the geography of Ontario must be taken into consideration in that respect, so region plays a big role.

The concentration of population is another thing too. You know the concentration of population is completely, as was mentioned before, outside of the north and in the south. When they would say that the Liberals are just taking a further position on referendum, it is those sensitive issues that must be addressed in complete detail in protecting those minorities that are now being clobbered by this kind of referendum deal where it bears only the self-interest of a few where the clusters of people are.

It's a very dangerous thing, a very sort of shortcut way in getting — I call it undermining the democratic process of the minority. I would be very cautious. There are many illustrations and examples that could be brought forward to show you how dangerous this could be if it is not handled in a proper way.

The Chair: Mr Bisson, one last comment.

Mr Bisson: You were asking for an example and I think the example of garbage is a good one. If people in the GTA decided that they wanted to have a referendum by which to dispose of their garbage in northeastern Ontario, they could win the referendum quite easily. There are two sides to this. You have to allow people access to the referendum by way of the region, but you also have to have some mechanism to protect people from the referendum in this particular case so that —

Mr Ron Johnson: The referendum can't go against the current law. A Metro referendum to put garbage in Kirkland Lake —

The Chair: Excuse me, Mr Johnson. Mr Bisson has the floor.

Mr Bisson: The example is that the provincial law that was on the books under our government said, "You shall not ship garbage." Under this particular referendum legislation, if it were in place, people in the GTA could ask for a referendum, sign up 10% of the electors and put on a referendum question in a provincial election a decision to ship garbage to Kirkland Lake, let's say, as an example. My guess is that referendum would probably pass because it's a lot easier for the people in the GTA to — my sense is —

Mr Wildman: If it's helpful, we're not talking about a Metro referendum; we're talking about a province-wide referendum, because that's what you're talking about.

Mr Bisson: Yes.

Mr Wildman: This happens to be in the federal jurisdiction but it's an example I can think of. The federal government right now is talking about finding a site in the Canadian Shield to have underground storage of nuclear waste. It would seem to me that obviously that is of importance to the whole of Canada, it's important to all of Ontario, but it is particularly important to the local community where they might happen to decide to bury it.

The only point I want to make, in just finishing what I was saying, is that on the one hand in this particular case, if the law was to say you don't ship garbage and you have to deal with it within your area and people ask for a referendum to change that, you'd have to have some kind of protection for the people where the garbage is coming to. There are two sides to the regional thing. You need to give people the access to the referendum and you also have to give people protection from the referendum. There are two sides to it.

The Chair: I have no members who've indicated further interest in speaking to this motion that has been put by Mr Silipo.

Mr Curling: I have another example that I am personally involved with, the radioactive soil which had temporary movement to Chalk River. I'm sure many people who have had radioactive soil and things like that, materials, moving up to Chalk River would quickly vote for that to be moved up. The fact is that the southern people would be glad to get all of that stuff up to the north. Therefore, I want to say to you that it is extremely important that we must — maybe I'm repeating myself — protect those minorities in those regions.

The Chair: Are the members ready now to vote on Mr Silipo's motion? I'll move to the vote.

Mr Silipo has moved an amendment to point number 3, to insert after "Ontario" and before "such" "where the issue applies province-wide, or of not less than 10% of the citizens of the relevant region of the province where the issue applies only to that region of the province."

Is it the pleasure of the committee that the motion carry? All in favour of the motion, please raise your hand. Those opposed. The motion is defeated.

It's now 6 o'clock and I will adjourn the committee until next week. We'll resume this discussion next week, February 19. The committee is adjourned.

The committee adjourned at 1759.

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*Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mrs Brenda Elliott (Guelph PC) for Mr Grimmett
Mr Derwyn Shea (High Park-Swansea PC) for Mr Boushy

Also taking part / Autres participants et participantes:

Mr Gilles Bisson (Cochrane South / -Sud ND)

Clerk pro tem/ Greffier par intérim: Mr Doug Arnott

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

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Mercredi 19 février 1997

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 19 February 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 19 février 1997

The committee met at 1540 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): I'd like to call this meeting to order. We are continuing our discussions on the issue of referenda, and we continue to discuss the motion put forward by Mr Clement some four weeks ago now — I guess four meetings ago, on December 18.

Mr Tony Clement (Brampton South): Mid-December, Mr Chair.

The Chair: I think December 18. We just checked here, and I think that's about the time frame. We're in the middle of it. We're at point 7 at the present time, and I'll read the point to start the discussion:

"(7) The commission could also determine whether the referendum question, on its face, is in violation of the Charter of Rights and Freedoms or the Ontario Human Rights Code, in which case the referendum would not proceed."

Mr Clement, do you care to start off the discussion?

Mr Clement: I think we already discussed point 7, Mr Chair, and I believe that we essentially agreed at this committee that we would add "the Constitution of Canada" after "in violation of" to make it more specific that it was broader than the charter. I think we have actually completed our discussions on point 7, and I wish to add something for section 8. That's my recollection.

Mr Alvin Curling (Scarborough North): You mean to say the Charters of Rights and Freedoms or the Human Rights Code or the Constitution of Canada? Where were you going to add that?

The Chair: We have a record of that discussion. I'm sorry about that. You're correct, we did discuss it. We don't have a record of a motion that's been put forward to amend that section.

Mr Clement: I'd like to move that after "in violation of" we add the phrase "the Constitution of Canada."

The Chair: Is that satisfactory to everybody?

Mr Curling: "...in violation of the Constitution of Canada and the Charter of Rights" — were you going to delete "Charter"?

Mr Clement: No. I didn't say anything about deleting anything; I said adding.

Mr Curling: Just add "in violation of the Constitution"?

Mr Clement: Correct, sir.

Mr Curling: And then comma, "the Charter of Rights and Freedoms"?

Mr Clement: Yes.

Mr Curling: Just read it straight out for me. I'm sorry. When you insert it —

Mr Clement: "...in violation of the Constitution of Canada, the Charter of Rights and Freedoms or the Ontario Human Rights Code, in which case the referendum would not proceed."

The Chair: Is there any discussion on the amendment that Mr Clement has put forward?

Mrs Sandra Papatello (Windsor-Sandwich): Chair, those questions about point 3, were we going to finish those before we moved on?

The Chair: Oh, yes. I'm sorry. I neglected to do that. Can we deal with this and then we'll deal with those points of clarification?

Is there any further discussion on Mr Clement's motion? Mr Clement has moved an amendment to point 7 to further clarify it. Doug, could you read this.

Clerk Pro Tem (Mr Doug Arnott): Mr Clement has moved that in item 7, following the words "in violation of" the words "the Constitution of Canada," be inserted.

The Chair: Are members ready to vote? All in favour of Mr Clement's motion? Those opposed? The motion is carried.

Mrs Papatello pointed out that there were a couple of outstanding issues left over from last week's meeting that required some clarification by Philip Kaye. Philip, could you inform the committee of what you found.

Mr Philip Kaye: One question that came up last week involved the composition of the referendum council of Quebec. Members have a copy of the Quebec Referendum Act which was distributed this afternoon, and if you look at section 2, it makes reference to the establishment of this referendum council and then goes on to say it is composed of three judges of the Court of Quebec, one of whom is the chairman —

Mrs Papatello: Section 2 of —

Mr Kaye: In the Quebec Referendum Act. Section 2 under chapter II.

The second sentence in section 2 mentions that the referendum council is composed of three judges of the Court of Quebec, one of whom is the chairman, designated by the chief judge of that court.

Two questions arise from reading this section, the first one being: "How are judges appointed to the Court of Quebec? are they federally appointed or provincially appointed?" and second, "Does the chief judge of the Court of Quebec simply designate the chair of the referendum council or all the members of the referendum council?"

With respect to the first question as to how the judges of the Court of Quebec are appointed, Quebec's Courts of Justice Act states that the judges of the Court of Quebec are provincially appointed. With respect to the second question, as to how these judges on the referen-

dum council are designated, they are all designated by the chief judge of the Court of Quebec.

Another matter I referred to last week involved my interpretation of BC's initiative legislation, in terms of whether or not citizens by initiative could seek a constitutional amendment. I spoke to the deputy chief electoral officer of British Columbia, who confirmed that the initiative procedure in British Columbia cannot be used to seek an amendment of the Constitution of Canada. Those were two items that were left over from last week.

The Chair: Thank you, Philip.

Mrs Papatello: Could you say that last one again, Philip, please?

Mr Kaye: As I mentioned last week, British Columbia is the only province which has provision for province-wide initiatives with a binding effect to the extent that the government can be required to introduce a bill following an initiative vote, and the question came up as to whether or not citizens who invoke the initiative procedure in British Columbia could try to seek an amendment to the Constitution of Canada through this process.

A concern I had as to whether or not that was possible was the British Columbia legislation, when it comes to the initiative procedure, makes reference to the applicant submitting a draft bill with the application for the issuance of the petition in the first place, and as constitutional amendments are made by resolution, not by bill, I questioned whether the initiative procedure could be used to seek an amendment to the Canadian Constitution.

As I said, I spoke to the electoral office in British Columbia, and they confirmed that the initiative procedure could not be used to seek an amendment to the Constitution of Canada, and one reason given was the fact that an amendment to the Constitution could not be made unilaterally by the British Columbia Legislature.

Mr David Christopherson (Hamilton Centre): If I'm understanding you correctly, it can't be used as an initiative to begin the actual legal process, but there's nothing to prevent a sounding of the public.

Mr Kaye: Under other legislation.

Mr Christopherson: Are you saying that it would just be ruled you cannot ask that question, period?

Mr Clement: A binding referendum.

Mr Kaye: That question can't be asked through the initiative procedure. British Columbia also has legislation requiring a referendum before the passage of a constitutional amendment. That binds the government to that extent. So if you're distinguishing between referenda initiated by citizens and by the government, BC is saying when it comes to amending the Canadian Constitution, the government can initiate a referendum and that it's mandatory prior to the passage of a constitutional amendment, but when it comes to the citizens initiating a referendum, they cannot do so on an amendment to the Canadian Constitution.

The Chair: Mrs Papatello, did you have a question?

Mrs Papatello: Yes. So in that instance, where does the process stop in British Columbia under their model? When it's a citizen's initiative dealing with constitutional items, does the process stop or can the citizen still go forward with it, only it absolves the government of any involvement, or can they just stop the thing from actually happening?

1550

Mr Kaye: I believe what would happen is that the citizen would make an application to Elections BC for the issuance of the petition to get the ball rolling and that Elections BC would say, "We're not going to issue the petition, because what you're seeking is not permitted under the legislation."

I was also told that in BC, because the legislation says the proposal has to fall within the jurisdiction of the Legislature, if a citizen brings forward a proposal that might be in conflict with the Charter of Rights, the elections office reviews the proposal and won't issue the petition if it's in violation of the charter, on the basis that if it's contrary to the charter it's beyond the jurisdiction of the Legislature of BC.

But getting back to your question in terms of a citizen who wishes an amendment to be made to the Canadian Constitution, the petition just wouldn't be issued, so there wouldn't be any opportunity to try to get signatures.

Mr Curling: But the judgement call, whether or not that question could be put forward, if it's not amending the Constitution, would it be the judge at the time or would it be the Legislature?

Mr Kaye: If it's a direct amendment to the Constitution, that would be quite clear.

Mr Curling: Yes, I understand that part.

Mr Kaye: But if it was a case that the proposal might violate the Charter of Rights, then the elections office in BC would make a ruling on that.

Mr Curling: Therefore, they could hijack the process before it goes to the judge. In other words, they could say, "I think this will affect the Constitution." Is it their call to say that or would it be the judge's call to say that?

Mr Clement: What judge? There's no judge in BC on it.

Mr Kaye: It probably is possible to challenge the decision of Elections BC. If someone felt that Elections BC was wrong in concluding that the proposal was contrary to the Charter of Rights, I believe that they could then challenge that decision in the courts.

The Chair: Did you have another question, Mrs Papatello?

Mrs Papatello: Not of Mr Kaye. Are you dealing with the same issue?

Mr Curling: No, no. Just this point.

Mrs Papatello: Question?

The Chair: You do have a question?

Mrs Papatello: Not of the researcher.

The Chair: Who is the question for, Mrs Papatello?

Mrs Papatello: It's just in general, I guess. Given the information that he presented then as a response to our questions of the Quebec model, the judges are clearly appointed by the province in Quebec. Whereas last week we thought there was something involving the federal government as to the judge's appointment, that's now not the case; in fact, the province appoints the judges.

I'm seeing a little window of opportunity here in terms of an amendment, that if it's seen by all of the members of the committee that the commission is going to be struck in a similar manner by the province, the members of the committee would consider there would be an all-party agreement as to the appointment of the individuals

on the commission that would deal with all of the issues, that there is a window of opportunity there to have agreement in terms of the issuance and appropriateness and usage, I guess, of referenda, and I'd like to make a note of that.

I'd like an answer actually in terms of what the government members think about that, because we discussed in brief in those other points so far on that list of 12, about this commission and all of the powers they have, in item 7 and item 6. So I think there's a window here for some agreement in terms of unanimous consent to the appointments to that commission. I think members may want to consider that.

I'd like to continue with our discussion of last week at committee when we talked about the representational aspect of point 3, because I didn't get to the answers. We were busy forwarding our information. I know there's going to be time today to get the answer, likely from Mr Clement, in terms of our questions regarding the regional aspect, the representational aspect of that 10%, whether it can be represented in regions.

Since last week we've had some press on this issue, and there is a differing view that's been put forward by the government on the binding nature of referenda and what we've heard at committee. We heard at committee that the referenda use would be of a binding nature to the government, whether it binds the government to come forward with legislation on that issue, that it goes through the process — however it's going to work, ultimately it's going to be binding to the government. Yet Mr Clement, speaking on behalf of the government on this issue, clearly indicated in the Sunday Toronto Star that they would be non-binding. I have to have clarification of that point before we can go any further, because that, as you know, goes to the very heart of the matter here.

The Chair: Do you care to comment, Mr Clement?

Mr Clement: I'd be happy to clarify that situation for Mrs Papatello and indicate that I've always said this would be binding on the government. I've always maintained that these would be binding referendums.

I further move to make it absolutely crystal clear to Mrs Papatello and anyone else reading Hansard that section 8 be amended by adding at the end of "the referendum result" the following phrase, which I alluded to at last week's meeting. The added sentence would read: "In either case, a referendum-inspired bill would be considered a government bill and would be pursued by the government at the earliest reasonable opportunity." I move that at this time.

Mr Curling: Are we moving at this time from dealing with 7?

The Chair: I allowed Mrs Papatello to make a brief statement expressing some interest. Technically, we should move to point 8 and I think that would be appropriate.

Mr Curling: Technically.

Mrs Papatello: You outlined that you would be going through all the points, that you wouldn't be doing these in —

Mr Curling: No, you jumped to 8.

Mr Clement: We finished 3 last week.

The Chair: We were done number 7 and then I recognized Mrs Papatello. She indicated an interest in

raising a few issues, I understood. That was how you prefaced it. I don't know exactly how you phrased it, but that was essentially what you said. I recognized you.

Mrs Papatello: Yes, so I'm just given that statement now about what we would add to number 8. Its relevance —

Mr Clement: Point of order, Mr Chair: I believe I have a motion on the floor, unless it is ruled out of order by the Chair.

Mr Curling: Point of order, Mr Chair: My understanding is that we were dealing with number 7. Mr Clement then amended a portion of number 7 and we voted on that. Then Mrs Papatello raised some points to give some intentions and some clarification down the road of some areas. Then all of a sudden I hear having number 8. I didn't realize that you had moved to number 8 already, because I'm waiting for a turn, for her to complete her turn.

The Chair: I would have moved to number 8, Mr Curling, but I recognized Mrs Papatello because she indicated an interest in speaking. I didn't know exactly what she wanted to say and I listened to what she had to say.

Mr Clement: Point of order, Mr Chair: I thought we had actually dealt with item 7 two weeks ago. We've certainly dealt with item 3, which was raised by Mrs Papatello 10 minutes ago. We dealt with item 3 last week. So in fact, sequentially, we are on item 8, which we had discussed two weeks ago as well, and there had been a consensus by the NDP member Mr Silipo and myself to add this particular or something similar to the motion that I have just read for the record and that I believe we are on.

Mrs Papatello: If the government members are in cahoots somehow with the NDP, I don't know that the current sitting member is aware of it. What I would like clarified before we continue on is an answer to the question. What the member now has given as his addition to number 8 has little or nothing to do with the question posed earlier regarding clarification on the regional nature, the geographic nature, the 10% and those kinds of things that would be encompassed.

Mr Clement: Point of order, Mr Chair: One week ago, two weeks ago and three weeks ago we have gone through the questions on the regional nature, the questions on how the 10% applies. I do not propose to waste the committee's time by going over that. If Mrs Papatello has difficulty remembering those comments and those discussions, I suggest that she re-read Hansard.

1600

Mrs Papatello: Point of order, Mr Chair: I guess what's clear is that when we deal with these issues at committee, what we're intent on doing is reaching some kind of consensus — certainly not agreement, because it's likely not to happen on this issue — that we're getting answers to the questions we pose. Chair, when we spoke last week, you had a certain series of numbers, of points we were talking to, and they weren't in order. When I asked you last week how this was going to function as you continued through, you said that we would finish the discussion on the point we were at and then I would be free to go back to discuss number 3, because we hadn't

finished our discussion on point 3. That was last week. Things haven't changed that dramatically since last week.

Mr Clement: Point of order, Mr Chair: Perhaps Mrs Pupatello was out of the room at the time, because she did leave the —

Mrs Pupatello: As soon as I finish my point, Chair, I think I would give up the floor voluntarily, but not certainly be spoken over.

The Chair: You have the floor, Mrs Pupatello.

Mrs Pupatello: The concern I'm having is that we've already been out of order on these points that we're speaking to today, so it's a precedent to be out of order as opposed to a precedent to be in order.

The Chair: I'll need the consent of the committee — it was a meeting that the Vice-Chairman was chairing; because of a number of points of discussion that became very difficult, he decided to take them in other than numerical order. I have since that time, since I've resumed the chair, been trying to follow numerical order. I didn't think that was a problem. That's the first time I've heard an objection, that this is a problem.

Mrs Pupatello: To continue my point —

The Chair: Just let me finish. I would like to move to number 8, if that's okay. Mr Clement did make a motion in the context, I think, of a point of order, if I'm not mistaken. It is perhaps a little premature, because I haven't called number 8 or read number 8, but I would like to, if the committee will allow me, and we can continue the discussion.

Mrs Pupatello: Could I continue my point?

Mr Clement: Point of order, Mr Chairman: I just wanted to remind Mrs Pupatello of the sequence of last week. I believe she was out of the room for a period of time and may not have recollected it as a result of that, for which it's not her obligation, but I did want to remind her of the fact that we had a vote on section 3, we had completed section 3 by dealing with an amendment which had been overhanging for a week period at that point, two weeks ago today. Mr Silipo had had an amendment on section 3; we had dealt with it. Consequently, that was the end of the discussion on section 3.

I just wanted to assure Mrs Pupatello that we had had a full discussion on section 3. We've now completed section 7 in terms of an overhanging issue. The reason I raised the issue, Mr Chair, just so you know, of section 8 was Mrs Pupatello asked me a direct question on what was my position personally, I suppose, on the binding nature of referendums, which was a topic we had discussed last week and the week before. That issue is addressed in section 8. Upon our discussion two weeks ago, Mr Silipo and I had had quite a fruitful discussion on how to make section 8 even clearer, which is embodied in my amendment, which I assumed was in order, since Mrs Pupatello seemed anxious to lay this issue to rest as well.

Mr Christopherson, you had a point of order.

Mr Christopherson: Two points. However, first of all, let me say what a happy bunch I see I'm so lucky to have joined here for what I am going to work hard to ensure is one visit only.

Two quick points. One is that I'm sure Mrs Pupatello did not mean to impute motive to any discussions that my

colleague Mr Silipo might have had at committee by using the word "cahoots."

Second, if the justification for moving off 3 is that there was a resolution agreed to by the members who were here that included Mr Silipo —

Mr Clement: No.

Mr Christopherson: Okay, maybe you can clarify for me then. You mentioned his agreement to something a couple of times. My only point was if your agreement or discussions with him, in your raising that, are to validate doing something or not doing it, he hasn't talked to me; he's off sick, so I'm not aware of that. It may be reflected in the Hansard. Just to go on the record that I haven't been apprised of that.

Mr Clement: Sure. Just to set the record straight, I do not want to put any words in Mr Silipo's mouth where they do not belong. He's in charge of his mouth, not me, and that's hunky-dory as far as I'm concerned. Mr Silipo and I had I guess an understanding of how section 8 would be amended. Section 3, he had a motion before this committee which the government side did not agree with. We disposed of that motion. He was unsuccessful in that motion, which was I think either the last thing or the penultimate thing this committee had dealt with last week. I did not mean to suggest that Mr Silipo and I disposed of section 3 last week, because that would not be fair to Mr Silipo.

Mr Christopherson: I appreciate the clarification.

The Chair: Still with the point of order, Mrs Pupatello.

Mrs Pupatello: The difficulty I'm having, Chair, is that we knew we were going to be out of order, but the Chair agreed to be out of order, for whatever reasons caused us to be out of order. At that time, when you said, "Do you mind if we continue this point?" it was because I knew we were going to get back to the discussion surrounding point 3, because in my view that's one of the more significant parts and problems, in terms of my opinion, with the whole thing. So I've got to be assured that at some point we do get back to that discussion. When you and I spoke outside the committee just before it was starting, you had assured me of that, because I would not have allowed it to go on without getting everything else on the record at that time.

In terms of my being helpful to the Chair to finish whatever point you were on — I guess that's where I'm at, Chair, because I'm taking you at your word.

The Chair: I must say, I recall our conversation; I don't exactly recall assuring you of what you're suggesting.

Mrs Pupatello: You were standing right here, leaning over us.

The Chair: I know I was. I think you indicated that you had to go for a period of time.

Mrs Pupatello: And I asked for a recess at that time, remember?

The Chair: Yes.

Mrs Pupatello: And I knew we were going to get back to that point.

The Chair: You didn't on the record ask for a recess.

Mr Clement: I'm sorry, Mr Chair, I was not apprised of that conversation and as a member of the subcommit-

tee if there's something we want to discuss, we can do that at that time.

Mrs Papatello: We could take a recess at the subcommittee level.

Mr Curling: Just like Mr Clement wasn't apprised of a certain meeting, maybe you could clarify this for me, Mr Clement. You suggested that you and Mr Silipo had agreed. Was this an agreement in a meeting of the subcommittee or was it in the legislative committee here? You said you had an agreement with Mr Silipo about a certain part of this presentation here. Did I hear you right, that you and Mr Silipo had an agreement in a certain area?

Mr Clement: To answer that directly, Mr Silipo's party, the New Democratic Party, and my party, the PC Party of Ontario, happen to agree with about 90% of what is embodied on this page. Consequently, there are times when Mr Silipo makes constructive suggestions — and I applaud him for that, because he is a very constructive member of this committee — and I have agreed with some of his suggestions. Consequently, I would have to say that Mr Silipo and I — I as the lead for my party and he as the lead for his party — have been trying to improve constructively this motion to get on with it. That is what I referred to.

Mr Curling: Oh. We also have —

Mr Clement: I invite the Liberal Party to be part of this ongoing exercise, but it has chosen not to do that. They have chosen, as Mrs Papatello made mention in the Toronto Star on Sunday, to try by any methods available to them to make sure that this committee does not resolve these issues. I'm saddened by that. That's their right in the democratic process, but I for one am not a participant in that. Neither is the NDP.

Mr Curling: Maybe I should inform Mr Clement that there's another party, called the Liberal Party, here. Whether he wants to agree and both you and the New Democratic Party want to get together — that's wonderful and that's the democratic process. But we have constructive things to say in this process. Regardless if he likes it or not, we will be making those comments. As a good Chair, as you are, you'll make provisions that we make those comments.

That's all I wanted to find out, when this agreement came about with him. That's fine. I don't care if they want to agree or disagree in the third party; that's none of my business. My business is that we are to put our party's position forward and make it show as constructively as possible. Whether he wants to call it "constructive" is his prerogative. I just wanted to make that point clear, how this agreement came about. The agreement is that the three parties would try to write as well as possible. We, of course, as indicated the way this thing is going, may be writing our own minority report on this.

The Chair: Mr Christopherson on this point of order.

Mr Christopherson: Just for the record, it would be helpful in terms of being constructive, given the fact that Mr Silipo is ill and he is our lead spokesperson, that you refrain from speaking for our party while he's not here in terms of what he may or may not agree with and putting definitions of 90% or other things. It would just be very helpful and allow me to try to play as positive a role as

I can here, whatever that might be and whether everyone agrees it's positive or not, but it certainly can't be if you continue to do that. So I would ask you to reflect on those sorts of things and withhold them if you could.

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The Chair: We've had fairly extensive discussion on this point of order. I would like to proceed, if the will of the committee exists to proceed, to point 8.

Mr Clement: Could you just identify then whether we're on my amendment at this stage?

The Chair: The pattern that we've been following has been that I would read out the point, then we would have discussion, and then it would probably be most appropriate to have the amendment after that first discussion; or if you want to move the amendment right off the bat, that's fine, we can do it that way.

Mr Clement: I'm in your hands, sir. As soon as you call section 8, then I'm quite prepared to move my motion.

Mrs Papatello: Mr Chair, on a point of order: I haven't finished my discussions regarding point 3. I was prepared to relinquish having the floor on point 3, in essence, because you had asked: "Could we just do this? Then you will have the opportunity to go back to 3." So I had agreed to relinquish because of that. I need your assurance now, Chair, that as amendments are being brought forward for this item, we will then move back to item 3. Had I realized you weren't going to go back, I would not have relinquished —

The Chair: I recall our conversation and I recall you indicated that you had to leave for a little while. I don't recall assuring you that we would — I don't recall that, I'm afraid. I hope towards the end, perhaps we can still entertain any other outstanding issues that members feel have not been conclusively discussed. I hope the consent of the committee would allow that and we could put your concerns, or perhaps you could tie some of those points that you wish to make relative to point 3 to the discussion on the subsequent points that we still have to do.

Mrs Papatello: Then it's going to be on point 8 now.

The Chair: Okay. I would like to now move to point 8.

Mr Clement: Then I would like to move my amendment at this time.

The Chair: Okay, point 8, "Referendum questions" —

Mr Curling: So I won't get to make any comment on point 7.

The Chair: We're moving on to point 8.

Mr Curling: Without my contribution.

The Chair: "Referendum questions would ask a clear and concise question, which would demand a yes or no answer, and would require a 50% plus 1 majority of voting Ontarians in order to pass."

Mr Curling: Mr Chairman, on a point of order: Is that the way we're going to proceed now, that even when I want to make a contribution to a point, you're going to move on regardless, because Mr Clement wanted to move on to make —

The Chair: I thought we had completed item 7.

Mr Curling: No, we didn't. The fact is you were dealing with points of order and I just waited through that process. Then you just barraged into it, and I kept indicating to you that I wanted to make a comment.

The Chair: Do you have additional comments relating to point 7?

Mr Curling: Yes, that's the point I'm trying to make.

The Chair: We had a motion by the government — no, who moved the motion? Mr Silipo?

Clerk Pro Tem: Mr Clement.

The Chair: Mr Clement, relative to point 7. That was defeated. I had planned to move to number 8.

Mr Curling: But your plan is kind of premature, to move on, because if his motion is defeated, I want to talk about it.

Mr Clement: The motion has already passed.

Mr Curling: What motion?

Mr Clement: Number 7. The motion is passed.

Mrs Papatello: Chair, our member may have a further motion for point 7. You always entertain them from all the —

The Chair: I believe I was saying I was going to move to point 8.

Mr Curling: Could I get an understanding here, Mr Chairman? I don't want to be confrontational. Mr Clement came and said he had an amendment in which he put the Constitution, "in violation of the Constitution of Canada, the Charter of Rights and Freedoms or the Ontario Human Rights Code." Then you made a vote on that. That was passed. That doesn't say it's over. That amendment to that thing was passed. A majority of them do that. Then there were comments, and I want to comment on this. You said you were going to move to number 8 because Mr Clement had a number 8 amendment and he is jumping to 8. I'm saying I want to comment on 7.

Mr Dave Boushy (Sarnia): It's already passed.

Mr Curling: What is passed? The amendment was passed.

Mr Ron Johnson (Brantford): Do you have another amendment?

Mrs Papatello: Chair, on a point of order: Let me just review for a moment how we ended up with this page with 12 points on it. I did this last week, I know, and I probably wasn't clear enough, because I recollect how we came to have this point of 12.

If you recall, in one of the first meetings we had —

Mr Clement: On a point of order, Mr Chairman: What is this relevant to?

Mrs Papatello: Sorry, I have the floor. Excuse me.

The Chair: Ms Papatello has the floor, Mr Clement, on a point of order.

Mrs Papatello: What we were doing at that time was discussing in general the issue of referenda, if you recall. We were talking about its relevance etc, and while we were doing that —

Mr Clement: You were taking seven hours of time to filibuster. Once you finish your discussion, then —

Mrs Papatello: Chair.

Mr Curling: Ms Papatello has the floor.

The Chair: You have the floor, Mrs Papatello. I'm listening to you.

Mr Clement: If you don't like my handwriting, we can have a discussion about my handwriting.

Mrs Papatello: Would you tell the member to stop interrupting.

The Chair: Mr Clement, Mrs Papatello has the floor.

Mr Clement: I will not have you talk about my handwriting any more in this committee. It's completely irrelevant to the discussion of the future of direct democracy in Ontario.

The Chair: Mr Clement, I would ask you to —

Mrs Papatello: I am very surprised at the unprofessional behaviour of the member from Brampton.

Mr Clement: Mr Chair, on a point of privilege: She has not the right to say these words about my conduct. She has not the right to characterize my conduct, and I do object.

The Chair: I'm going to recess the committee for five minutes.

The committee recessed from 1617 to 1702.

The Chair: I'd like to call the committee again to order. As Chairman of this committee, I must say I am quite disappointed with how we allowed ourselves to lower the debate earlier. I hope all members will recognize that all members on the committee are honourable and that we can keep a standard of decorum which is commensurate with what our responsibilities as members would indicate it should be. Certainly, I would again say to all members that I ask for their cooperation and help as we move forward on this issue.

I think, as Mrs Marland pointed out a couple of meetings ago, this has been one of the least partisan of committees. We have tried and endeavoured to work together, and I hope that spirit will prevail ultimately.

I guess I'll report what the subcommittee had determined, that we would go back to point 7 and allow the Liberal Party to make some comments relative to point 7. We would then proceed to point 8, and then we would go back to point 3, which was the request of Mrs Papatello. That is what the subcommittee decided as to how we would proceed from here.

Mrs Papatello, you had the floor when I called the recess and I would recognize you now.

Mrs Papatello: It's quite interesting, because the longer we're at this, the more things change, and we're constantly being presented with new information that makes us want to go back and revisit the things we've already discussed. Every time our research makes a report on something, it certainly begs the question on various other points.

My difficulty right now is that while you chose to move to recess, certain members of the government, namely, John O'Toole, selected that time to inform me exactly what he thinks is the state of my mental capacity, getting into the name-calling. I suggested that he put that on record so that we can debate that appropriately. I'm more than prepared to debate my mental capacity when it's on the record, not when it's in this room and being screamed at me.

I guess, Chair, I need to know what exactly you intend to do since members of your committee are behaving really very badly and unacceptably anywhere on this precinct. If he wants to yell at me on University Avenue, fair game, but when we're in a committee room, I will never take to being compared as better or worse than Sheila Copps or I'm a mindless twit. This stuff is just absolutely ridiculous and it certainly points to how low

someone would go to have me not have the opportunity or be in some position to make my views known.

I've been very clear since the beginning that we will not agree on the use of referenda and the issue in Ontario. We're never going to agree to that. There are very few things that we're allowed to do as committee members, as legislators, when it becomes a bill, when we discuss it. There are very few opportunities we have to make any dent, any opportunity to change the course that the government is on. When it's on this issue, which our party feels very strongly about, there are very few tools available to us. The committee is one of a very few of those.

I find it reprehensible that any member is going to stoop to the level of name-calling. People have said, "Well, when you're in this game, you've got to fight." I think that's fair. When people have been offended by something I've said and they've asked me to withdraw the remarks, I have done so on every occasion, because it's never going to be the intent of our committee members, I sure hope, to personally offend people.

I asked the member to wait and put them on record, and what he said was: "You can't make me do that. I'm not going to say that on the record." He knows the rules. Clearly if he says it during the recess, it's gone, and there's nothing the Chair can do about it.

I would like to know exactly what is within the purview of the Chair to do to have a colleague of yours, which I am — how you as Chair of this committee expect to ensure that I'm not going to be subjected to name-calling by people who have every right to be here, as I do, and express their opinions into the record. That's our job. So, Chair, I'd like you to discuss that issue before we move on to my point of order prior to the recess.

The Chair: Mrs Papatello, you're quite right when you say that it's the job of the Chairman to try to maintain a level of decorum in the committee. That is quite correct. I endeavour to do that as best I can. At times, when members have very passionate views on various points, decorum isn't what it should be, and I would agree that decorum was not what it should be when I had to call the recess.

When Mr O'Toole returns to the committee, I will ask him — here he is now. I would ask you, Mr O'Toole, if you would care to withdraw any of the comments you made relative to Mrs Papatello's point of order.

Mr John O'Toole (Durham East): I have no idea what she's talking about. I've just entered the room now. If we could have a recording of Hansard, I'd be pleased to respond. Otherwise, I have no idea what Mrs Papatello was talking about.

Mrs Papatello: Shall we wait for Hansard, Chair?

The Chair: There's no Hansard, Mrs Papatello, for several days. It's at least a week or two behind.

Mr O'Toole: I'd be pleased to speak to Mrs Papatello after the meeting is over. This has really nothing to do with the meeting.

The Chair: Is that satisfactory? I would like to proceed.

Mr O'Toole: I'd be pleased to speak to her after.

Mrs Papatello: As for our subcommittee meeting that we had during the recess, it was understood by the three

members — Mr Clement, Mr Christopherson and myself — that what you would do today was ask the member to withdraw his remarks, and there was some agreement on a personal level that they were wholly inappropriate and certainly shouldn't be entered into in this room.

As I stated before when Mr O'Toole was out of the room, if someone's got something to say to me of a personal nature, in particular that kind of nature, of malice, running into me on the corner of University Avenue is perfectly open, everything is fair game, but because it was specifically said during recess and he specifically knew that it wouldn't be recorded, there's no record of this kind of behaviour by members of the government committee.

Let's face it, we're a minority here at this committee; we're a minority in the House. I'm just a backbench Liberal member who has some very strong views on referenda, and I mentioned earlier that there are very few tools available to the opposition when you're in this government, and in particular this government. There is some precedent here with Bill 26. There are not a lot of tools available to us to get our point across. We can make all the motions and amendments in the world and they'll be defeated by a government that is on a certain track. We don't have a lot available to us to come to a compromise, because what we know about the government is that there are no compromises with the opposition parties, in particular on this subject matter. We know that the leader of this from the government benches here is Mr Clement. He has mentioned several times that there was some agreement with Mr Silipo, who was sitting at the time for the NDP. If there was agreement there, it was to disagree. The whole time we've had this discussion, unfortunately we've had to agree to disagree, because we're not going to have agreement.

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Nevertheless, Chair, what you indicated to me was that you might be a little more forceful in terms of ensuring some kind of decorum. I personally asked for the expulsion of the member from the committee. Whether it's in recess or not, it's your recess. That's like saying that when kids are playing in the school yard and the bully decides to give the little kid a bloody nose, the teacher or the principal doesn't have any purview in the playground.

Mr Ron Johnson: Do you have a runny nose, Sandra?

Mrs Papatello: Here we are with this big bully at recess in this room and the Chair has absolutely nothing available to him to expel the member from the room. I'll tell you again that comparing me to any other political figure they might be aware of, yelling at me and calling me names does absolutely nothing to discourage me. If I may say, the only thing it does is galvanize me. What it tells me is that I must have something here, these guys are getting so angry I really must be on something here.

If I could put it to the Conservative members in that way, I'll never be discouraged by this kind of behaviour from them, but I do expect that these attacks do not become personal, because, as I mentioned before, if I have ever made a personal remark that was offensive to any member, I have always withdrawn the remark.

The Chair: Thank you, Mrs Papatello. I have Mr Clement and Mr Christopherson.

Mr Clement: I think it's fair to say that my recollection of the subcommittee was a bit different from Mrs Pupatello's, and although she did raise the issue she has just alluded to in the subcommittee, I believe the agreement of the subcommittee was to move to item 7. She has put on the record her point of view on this, so it is now in Hansard and on the record. Mr O'Toole has pledged to look at Hansard to review the situation and to return to this committee if he has a further comment to make. I would just encourage us to move on to item 7.

Mr Christopherson: First of all, my recollection of the subcommittee, since none of us took any notes other than a few brief ones, I think, that you took, is that the process you've outlined is indeed the one we agreed to. I'm comfortable with the fact that Mrs Pupatello was given an opportunity to raise her point of personal privilege, and then items 7, 8 and 3, in that order, would be followed. I do not recall that you agreed you would call on the member for Durham East to withdraw, but rather you would afford him the opportunity to do so after Mrs Pupatello had relayed her concerns.

I also want to say that I was in the room and I did hear the comments as Mrs Pupatello has described them; that was my personal recollection.

Thirdly, it is my opinion, as one member of this committee, that it would be helpful and appropriate and certainly becoming of a parliamentarian that he should withdraw those remarks, whether we were in session or not.

The Chair: In response to one of your comments, Mrs Pupatello, the Chair does not have the authority to expel a member from the committee, according to the standing orders.

Mrs Pupatello: As a footnote, Chair, I wonder if we could have some research in terms of precedents on this issue; if this has come up before, what the Chairs of the day have done in order to deal with it, because I understand that there's a little bit of comparison —

The Chair: We will undertake to do that. We will try to get to Hansard for next week. Okay.

Mrs Pupatello: Just so I can finish, there's some comparison to the Speaker's authority and the Speaker's authority in the House as it compares to the Chair's authority in committee. Our House leader is now speaking with the Speaker to see about that as well. I don't know if you could direct the clerk to see about that.

The Chair: We will undertake to do that and have a response next week.

Going back to number 7, "The commission could also determine whether the referendum question, on its face, is in violation of" — I'm sorry, as amended; I need the amendment to number 7 if I want to read it again.

Mr Clement: I could read it, Mr Chair.

The Chair: If you've got it there.

Mr Clement: "The commission could also determine whether the referendum question, on its face, is in violation of the Constitution of Canada, the Charter of Rights and Freedoms or the Ontario Human Rights Code, in which case the referendum would not proceed."

The Chair: Is there any further discussion on point 7?

Mr Christopherson: As members will note, Mr Curling, who is the opposition member who wanted to

raise concerns and in the subcommittee we agreed he'd be given that opportunity, was called away for an urgent phone call. You'll also note that Mrs Pupatello has left the room for a moment to try to get him here so that he can respond. If he has not yet completed his urgent phone call, perhaps we can realign things to accommodate that. I'm not trying to complicate things — we just finished setting an agreement — but if it doesn't matter to the majority of us here and the intent was to allow Mr Curling —

The Chair: We could move on to point 8 at this time, then, and when Mr Curling comes back —

Mr Christopherson: Do 8, 7, 3, maybe, and give Alvin a chance?

Mr Clement: Sure.

The Chair: So, 8, 7, 3, is that agreed? Thank you. Moving now to point 8, again:

"Referendum questions would ask a clear and concise question, which would demand a yes or no answer, and would require a 50% plus 1 majority of voting Ontarians in order to pass. The effect of such passage would be, in the case of a simple question, to introduce for first reading a bill designed to accomplish the referendum result and, in the case of a more defined bill or proposition, introduced for second reading, a bill designed to accomplish the referendum result."

Mr Clement: I sense, with great anticipation, that this is the appropriate time for me to move my amendment, which would read, at the end of the section, adding the sentence, "In either case, a referendum-inspired bill would be considered a government bill, and would be pursued by the government at the earliest reasonable opportunity."

The Chair: Could you read that again, more slowly?

Mr Clement: I have it in writing. I apologize, Mr Chair, it is in my own handwriting, but I've used block lettering in order to make it more legible.

Mr Christopherson: You're just a glutton for punishment, aren't you?

The Chair: I'll read it again for the opposition members. "In either case, a referendum-inspired bill would be considered a government bill, and would be pursued by the government at the earliest reasonable opportunity."

Mr Christopherson: Could we have copies of said handwritten amendment?

The Chair: It is indeed legible, or I couldn't have read it myself.

Discussion on Mr Clement's motion? Mr Clement.

Mr Christopherson: On a point of order, Mr Chair: Just in terms of the process, quickly, are we going to deal with this amendment first as an amendment, have a discussion and a vote and then return to the rest of 8?

The Chair: I've recognized Mr Clement. He moved the motion. Could we not do it all together?

Mr Christopherson: No. How are you going to do that? The rules of procedure are that you deal with amendments first, and then you deal with the main motion. I just wanted to be sure, given some of the problems I've picked up here around process. Normally one deals with an amendment, you debate the amendment and the merits of it, and then it's either up or down; that affects the main motion, and you have a debate, and it's

either up or down. You can't move an amendment and say: "There's the amendment. Now we'll vote on the whole thing in one fell swoop."

Mr Clement: In fact, it's one motion, David. None of these sections have been voted on as a section.

Mr Christopherson: You haven't been doing them as sections, individually?

Mr Clement: No, sir.

Mr Christopherson: So if you get closure on your amendment, that's the end of debate on part 8?

Mr Clement: No, we just keep talking about it until we want to talk about something else.

Mr Christopherson: That's interesting process. How do you close discussion around 8?

Mr Clement: Now you know why we're in our seventh meeting on this issue.

The Chair: We'll have a vote on the whole motion at the completion of the process.

Mr Christopherson: At the end of your time.

The Chair: Right.

Mr Christopherson: I see.

The Chair: We established a way of doing things, that if a party was opposed to a given point, they would move a motion to have that point deleted. That's how we've been doing it.

Mr Clement: Without wishing to put words in anyone's mouth other than my own, which is enough of a task that I don't need to complicate it by making it more complicated, I think this does address both the discussion that occurred two weeks ago and the discussion that occurred one week ago, to bring more certainty to the effect of passage. This is an issue that has been complicated by decisions made by the judicial committee of the Privy Council and the Supreme Court of Canada which attest to the fact that one cannot bind the crown through a referendum piece of legislation.

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It is the intention of the mover of the amendment, however, to bind the government — or more precisely, I suppose, the executive council, but I think "government" covers that — to make it clear that the bill would be treated as a government bill. The mechanisms for doing so, having reviewed the deputations before this committee, have not been more exact than that, but I believe it is the role of this committee not to write the legislation but merely to advise the Legislature on a preferred direction, and that this amendment would give exact enough advice so that drafters of the legislation could then draft, and this committee and the Legislature would then have an opportunity to debate whether the sections of any proposed legislation would meet the requirements of this committee's wishes. I think this accomplishes that task.

The Chair: Is there any further discussion on the amendment?

Mrs Papatello: We're going to have copies before the vote, aren't we?

The Chair: Yes. The copies are coming in right now, I believe.

Mr Christopherson: Did you actually refer to yourself in the third person? Did you say, "The writer of the amendment"? Is that what you said?

The Chair: Any further discussion on Mr Clement's amendment?

Mr Curling: Would someone read this for me?

The Chair: Any further discussion on Mr Clement's amendment?

Mr Curling: Is this already in here? Would someone read it for me? "In either case" —

The Chair: "A referendum-inspired bill would be considered a government bill, and would be pursued by the government at the earliest reasonable opportunity."

I'd like to move now to the vote on the amendment.

All in favour of Mr Clement's motion, please raise your hand. Those opposed? The amendment carries.

Mrs Papatello: Discussion?

The Chair: Yes, discussion. We're still on point 8 if you wish to move a further amendment.

Mrs Papatello: The discussion surrounding point 8 concerns, once again, the issue of majority in what's considered passage of a referendum. As I understand the procedure, we deal with 8 separately from the amendment of 8. Right, Chair?

The Chair: We just passed a motion to amend point 8.

Mrs Papatello: Which passed.

The Chair: Which passed.

Mrs Papatello: Now we're just in discussion of the general point 8.

The Chair: I think it would make sense to have discussion of point 8 as amended.

Mrs Papatello: Okay. We're talking about "a 50% plus 1 majority of voting Ontarians in order to pass." There are several questions in point 8. The first, that's the most difficult, is the "50% plus 1 majority." The reason I say this is because it hearkens back to the discussion we had last week, where we didn't have an answer that was clear; we didn't have an answer at all. In discussion you have to make the comparison of the kind of representative government we have in Ontario, where there are ridings of a size of something like Thornhill, with 120,000 people in it, and then you have ridings in the north, which is more sparsely populated, and yet each individual who comes representative of that area holds the same count in a vote, namely, one.

Given that that's the case, we have representative government in Ontario; it is not a one man, one vote government, never has been. This particular government has moved far closer to one man, one vote, by changing the boundaries and moving the boundary lines so that we in essence now have less of a voice for rural and more sparsely populated Ontario and less of a voice for people, for example, who represent agriculture etc who happen to also come from those areas. They've moved closer to one man, one vote, but it's nowhere near the position of being one man, one vote.

We've decided to do this historically in Ontario because we've discovered the need to have a representative type of government so that there are groups of people, regions in Ontario, in the country that have their own concerns and their own voices. We as a government have always agreed that they need to be heard and so have given them equal vote. If you look at the Canadian model, we see that the representation that comes from

Prince Edward Island — despite the size of its population, they too come to the table in a very forceful manner, either as a province and a voice, such as in the Charlottetown agreement, or the individuals who are federal members from Prince Edward Island also have a significant hand in governing the nation.

We looked at those examples when we had that discussion of Bill 81, which was the Fewer Politicians Act. I think we recall that we were all highly offended just by the very name of Bill 81. Its intent at the time was to lessen the voice for areas and move it closer to one man, one vote, but it doesn't come anywhere near having one man, one vote. The claim at that time for Bill 81 and the rationalization was, frankly, get rid of politicians because fewer is better, which is why it was titled as such.

The other reason was that they would then match the federal riding sizes. That was one of the reasons to change the boundaries, provincial to equal the federal; they thought it would be saving money, for example, make it easier, simpler for people to understand. They certainly may have an argument on that point, that the public would understand that in my case in Windsor, it wouldn't be Windsor-Sandwich as the provincial riding, it would be Windsor West the provincial riding, which is similar to Windsor West the federal riding. People would understand that where Herb Gray's riding is, that's also Sandra Pupatello's riding. There is an argument to that sameness. When we had that discussion, we also recognized — and this is the discussion that happened on a national basis — that there was a specific calculation and a formula that was used to determine the representational nature of where the people came from across Canada.

That was why Prince Edward Island had the number of representatives on that island that it had federally — not because of the population of PEI, but because of how it stands as an equal province in Canada. Likewise, the territories were in the same position to have a very sparse population in the far north and far west, and they too have a significant voice that represents the population there, because the formula that was used in that system was a formula that resulted in certainly a change in the ridings.

When we did the division, the divisible number they used nationally was very different from the one that can now be used provincially. What we discovered through all those debates on Bill 81 was that the divisible number, when you calculated how many people on average in a riding nationally — they're actually smaller on average than what those same ridings would be provincially. In the province of Ontario, we now actually have the biggest number, so they're actually the largest ridings, on average, in Ontario. That was a bit of a difficult concept, because if the ridings are the same provincially and nationally, how come the average is different? They're different because the quotient, the bottom number you used in your division, was different on a national basis than it was on a provincial basis.

The intent was always, when we were looking nationally, to maintain that regional component, geographic component, the population disparity, that you have such sparse parts of the north and west and east, all of those

were taken into account when the new ridings came into being on the national scene. So when the province went through its machinations, it simply took those same boundaries and made them the Ontario boundaries.

The difficulty we have is that we all agreed that in Ontario we have to have representative government, we have to have areas of Ontario that have a voice even though they may not have that group of people coalescing in a particular region to have that same strong sense. So it still seems rather odd that you would find 120,000 or 110,000 people in the riding of Thornhill represented by Minister Palladini, yet you would go to a different community in the north and have as little as, say, 30,000 to 50,000 constituents, yet you've got both members in this House voting equally, each entitled to one vote. But there was a very good reason for us doing that. We agreed that was the case; we agreed that the north needs to have a voice, because there are topics and subjects of great importance, of great relevance in the north, that they should have that kind of equal vote.

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Given that Bill 81 actually passed in the House despite our objections, that the government members in particular are on record, almost every one of them, in support of that — I remember very distinctly having a debate with Minister Johnson over that issue in London and he said something very clear. He said at that time that he understood the need for regional voices, for rural voices etc. This can't be the same group that today wants to institute in point 8 "a 50% plus 1 majority of voting Ontarians in order to pass" a particular referendum question, because the issues that are inherent in any referendum that might be given, any issue, any question, those same rules apply as they do in the province of Ontario when they're voting for their government. It applies in that their rural representative has an equal say and us urban representative has an equal say.

The question becomes one of — we had a great example last week. The example was about the Temagami forest and whether or not the southern Ontario people — and this has been a long-standing issue. The environmentalists who find themselves more populous in the south of Ontario had very strong issues about not allowing the cutting down of trees in the north. The people who live around the Temagami forest have very strong views about whether they should be allowed to cut down the trees in their neighbourhood. The basis for the discussion centres very generally — I certainly don't pretend to know this issue well, except that because you find more environmentalists in the south, they tend to have a strong hand in —

Interjection.

Mr Curling: It's good stuff.

Mrs Pupatello: I would think this is fairly relevant to the discussion of the kind of representation you'd have in voting.

The Temagami forest, I might remind the government members — if it's not a hot issue today, wait for it, because it certainly will be. It tends to be every few years or so. I think during your term it too will become quite an issue. You'd be wise to pay attention to this particular example. The individuals who live in the north feel very

strongly about the kind of economic development that surrounds the cutting down of trees. They're very particular —

Mrs Margaret Marland (Mississauga South): Point of order, Mr Chairman: I wonder if you could confirm for me which point in the resolution Mrs Pupatello is speaking to.

The Chair: Mrs Pupatello is speaking to point 8, as amended relative to Mr Clement's motion.

Mr O'Toole: Could we have that point 8 read into the record? I just want to make sure.

Mrs Pupatello: I'd be happy to do that as part of my discussion, absolutely.

Mr O'Toole: At least it would be relevant to something.

Mrs Pupatello: Any time I can help.

The Chair: I would encourage you to keep your comments relative to the point at hand, Mrs Pupatello.

Mrs Pupatello: The point that we're discussing is: "Referendum questions would ask a clear and concise question, which would demand a yes or no answer, and would require a 50% plus 1 majority of voting Ontarians in order to pass. The effect of such passage would be in the case of a simple question, to introduce for first reading a bill designed to accomplish the referendum result and, in the case of a more defined bill or proposition, introduced for second reading, a bill designed to accomplish the referendum result."

Since, although I don't personally agree, the government members passed the amendment to point 8, I must add, "In either case, a referendum-inspired bill would be considered a government bill, and would be pursued by the government at the earliest reasonable opportunity."

That is point 8, as one of the government members requested that be read into the record. I always like to be helpful when I can.

The discussion I'm having is specifically around the "50% plus 1 majority of voting Ontarians in order to pass." The best example —

Mr Ron Johnson: Just explain to me the trees.

Mrs Pupatello: — is the discussion of the Temagami forest. I say that the government members may be wise to listen to this, because this issue becomes a very hot issue every few years. It probably will never go away. It's a very contentious issue. I don't know that there is a right or wrong; I don't think there ever is. There never is a right or wrong in these kinds of things, because you have to see the merits of both sides. The difficulty with the Temagami forest is that there is such a number of environmentalists who live in the south — not that there aren't in the north, but there are far more in number in the south — that they tend to have a great deal of influence on legislators, so much so that those in the north feel, if I'm speaking for them, that they too have a voice on this particular issue and sometimes they feel like they're overpowered by the voice of the several hundreds of environmentalists who exist in the south, around the Toronto area, those concerned with this forest.

The people in the north on this issue know that cutting down the trees in the north is absolutely essential to the economic development of the north. It drives the paper mills, it drives the paper industry, all the other uses of

lumber in the lumber industries. Having the accessibility to the Temagami forest is critical to that. Not only that, but they also have incorporated the ideas of the environmentalists. Governments in the past, Conservatives included, have always insisted that there be a particular pattern followed as to how long they're prepared to let an acre lie fallow, when they replant trees, as they cut down they must reseed, regrow so it's always a growth industry; there are always trees being planted.

Nevertheless, environmentalists, who you find more populous in the southern part of Ontario, feel they're really not doing enough and that they should. It was brought particularly to attention before the Liberal government was elected — it was actually the defeat of the Liberal government perhaps, when Bob Rae went up to the Temagami forest and chained himself to the trunk of a tree. He got terrific press over the issue, but he was standing up as a Toronto-based environmentalist and certainly making a public political position on what the government's position should be regarding the cutting down of trees.

What is so telling about that description is that again we saw the political forces surrounding Toronto and Queen's Park pretty much take over and determine the northern economic viability of the area. We saw that people who come from a different place — and this was the sense of the northerners, that we actually have people who don't live in the north, who they thought didn't understand the nature of the economic development of the north, and their voices weren't heard. Instead they were allowed to go ahead.

This government has been dealing with a particular issue — and this is very current — in whether or not they're going to be allowed to build a road into the forest. Before that, they had a great deal of difficulty getting the large machinery there. This again became a contentious issue. Just for the record, the Premier, albeit being a northerner, has agreed, and they are going forward and building the road in. The people in the north need the road because they know they have to have good, efficient access to the cutting down of trees, and the people in the south, basically, if you had to be rough about the description, the environmentalists of the south think that by building the road you're just going to encourage more of the cutting down of trees etc.

1740

Let's say that we have referendum legislation in Ontario. Let's say there are people surrounding Toronto who wish to bring forward a referenda item, and the referenda item is going to be around the cutting down of trees in the Temagami forest. The difficulty that we're going to have as a province and as a government —

Mr Ron Johnson: On a point of order, Mr Chair: I recall having this very discussion last week, and in fact, not only did we have this discussion last week, the very example of Temagami was used. I think if the member for Windsor-Sandwich would go back and review Hansard, she would know very well that not only myself participated in that discussion, but I know that Mr. Wildman participated, as she did. Maybe she forgets what was discussed a week ago and what she said. I can refresh her memory, and I'd refer her to Hansard to do that.

As well, these points were made already. In fact, there was an amendment on the floor from Mr Silipo that dealt with regional referenda, and that's the point that Mrs Pupatello appears to be making all over again. That has already been voted on by this committee, the amendment by Mr Silipo. I don't see us going in any new direction here. I see us reviewing the same points that she made a week ago, and I just ask that we move on.

Interjections.

Mrs Pupatello: Put them on record, tough guy, put them on record.

The Chair: Order. I would draw members of the committee —

Mrs Pupatello: Put them on record, John.

The Chair: Order. I would direct members of the committee to standing order 23(c), which suggests that members should not persist in needless repetition nor in raising matters that have been decided during the current session, so I would caution Mrs Pupatello not to —

Interjection.

Mrs Pupatello: Did you hear that? Is that on the record?

The Chair: No. I'm talking. I have —

Mrs Pupatello: Now we're in session. I have to be called a mindless twit while we're in session now, Chair?

The Chair: I'm sorry. I was speaking and I did not hear the comment. Mr O'Toole, do you care to withdraw any comments?

Mr O'Toole: It was mindless twittle is what I said, and really we're saying that this is repetitive, over and over again. That's really what we're saying, Sandra. Try to stick to the point, the particular discussion at hand, and people will listen, but it's just a repugnant type of repetition and repetitive, with no respect for anyone else's time.

Mrs Pupatello: Put them all on the record, Mr O'Toole, all the names. Just go ahead. Put them all on the record.

Mr O'Toole: I just honestly think you should respect other members' time as well.

The Chair: Order. I would caution you not to engage in repetition of arguments that have already been discussed. You have the floor, and I would ask you to proceed.

Mrs Pupatello: I'm asking you to ask the member to withdraw his remarks now that they're on record.

The Chair: I asked him if he cared to withdraw any remarks.

Mrs Pupatello: I didn't hear you wait for an answer.

The Chair: I will ask you again, Mr O'Toole: Do you have any comments you would like to withdraw?

Mr O'Toole: Would she like to withdraw her remarks? I would respond by asking her if she would withdraw repetitive, redundant remarks.

Mrs Pupatello: Can I get an answer, please, Chair.

The Chair: Would you care to continue with your discussion?

Mrs Pupatello: I need an answer. You've asked him a question.

The Chair: I've asked him twice if he cares to withdraw comments. He clearly does not.

Mrs Pupatello: The only good thing about that interjection that you evidently gave him the floor on as a point of order was that the member was actually listening, so considering others' opinion about what my comments might mean, I'm so happy to see that the member for Brantford has actually been listening to my comments. The point of the matter was that when I was in this discussion the other day, it was on a different point.

Mr Ron Johnson: You're making the same point.

Mrs Pupatello: No. As it was discussed at subcommittee actually just a short time ago, there are a number of issues in point 8 that are highly relevant to point 3, which we now have agreed at subcommittee we'll be going back to.

Hopefully, I'll be very expressive. I find that while I may have touched on the same subject area and use of example, I'm saying it in a far more eloquent manner today than I was able to do last Wednesday. I had since prepared actually in my research and discussion about the Temagami forest. In fact, I never got to discuss the actual question of referenda, which is the point of using that as the example. When you choose, or should people choose, to use the subject matter of the Temagami forest as a referendum in Ontario, what you'll see is that the way it is laid out in point 8 will be an absolute disaster. It will not just be a disaster for the north; it will also be a disaster for the south. It will be a complete disaster when you use that as the example, because the people in the south are so concentrated and there is such a power base around Toronto that you will never have the opportunity for the people in the north to have an equal say about how that issue affects their lives; for the very same reason that the member for Brantford voted in favour of Bill 81, which meant representational government in Ontario. The very same rationale is now in place for —

Mr Ron Johnson: I don't know if I was there.

The Chair: Order. Mrs Pupatello, you do have the floor.

Mrs Pupatello: The very same rationale that any of the government members voted in favour of in Bill 81, which still has the components of representational government inherent in it, is the very same argument why you cannot, simply cannot, and it is simply unacceptable to, vote in favour of anything that allows the win on a referendum to be conceded at 50% plus 1, when you don't have any clauses which allow for regionality, geography, population concentration.

It may take a little bit of time, and I need to have a little bit of time to think of other ways and other mechanisms, and as the member from Brampton has pointed out aptly, I have tried a number of ways to make my points clear. These government members who voted in favour of Bill 81, the very same rationale that government members voted in favour of in Bill 81, which incorporated the very reasons that you need to have regional disparity represented in government — why you have voices for the north, voices for rural Ontario, voices for the urban centres in Ontario — all of those very same reasons, those are the reasons that you cannot have referendums being passed in Ontario without those same clauses in this legislation, in this report which eventually is going to be legislation.

Mr Ron Johnson: Mr Chairman, on a point of order: I just have a quick question to the Chair. In my view, you could use this very argument that Ms Papatello is trying to use in terms of regional representation and referenda and apply it to almost every one of the points that we have for the referendum model that we've got here as some of the guidelines.

My question is this: We have heard this time and time again. We've heard it on other points. Is the committee learning anything new or obtaining any new information from the member for Windsor-Sandwich with respect to the regional representation that she wants to get when in fact we already debated this over Mr Silipo's motion?

You, yourself, Chair, just read the standing orders, yet you allow this to continue, when you have sat here through these deliberations for the last number of weeks. In fact, I would argue that we have spent five to seven hours on this one particular issue in terms of regional representation and referenda.

I ask you, Chair, to enforce the standing orders and to make sure that we do move through this debate in an orderly fashion. If she has something new to add, I would want to hear it, but I certainly don't want to keep hearing the same drivel from the member for Windsor-Sandwich.

The Chair: Thank you, member for Brantford. I do not have a copy of last week's Hansard, unfortunately, to review and to determine whether her comments are repetitious. Hansard has not yet provided a record of what was said last week. It's not yet available.

I would again caution Mrs Papatello not to be too repetitious with her argument. As I said earlier, it is against the standing orders to be unduly repetitious.

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Mrs Papatello: The point we make in point 8 is that it would demand a yes or no answer and would require a "50% plus 1 majority of voting Ontarians in order to pass." That it should be similar to the discussions in point 3, which specifically relate to citizen initiatives, it's a completely different point.

My discussion centres around the "50% plus 1 majority of voting Ontarians in order to pass." That in itself is totally related to how we sense as legislators, how we feel we should be putting questions to Ontarians or whether we should have citizen initiatives in fact. You know because you've been told — and in the case of Brantford you've been told several times — you've heard this point before —

Mr Ron Johnson: No kidding.

Mrs Papatello: The point is that we were arguing against Bill 81 for a whole series of reasons. You voted for Bill 81. You were in favour of Bill 81. You were in favour of representational government. There is a principle inherent in that: that if you voted in favour of it — you didn't just vote in favour of it, you introduced it; it was your bill. You introduced it, you took it on the road in public hearings. Now I think there was some political mischief in doing that, because I think you were intent on bringing a bill that was entitled the Fewer Politicians Act right around Ontario. I think what you got when you did that was a number of people coming to the table and saying: "Hey, I'm a rural farmer. I want to have an equal voice."

Mr Ron Johnson: Were you there?

Mrs Papatello: I travelled, absolutely. I travelled to the hearings. Rural farmers came to the table from Middlesex, and they said: "I demand to have a voice. I want to have just as much a voice as the guy who lives in Wawa or the fellow who lives in Thornhill."

The difficulty is that these are the same Conservative government members who voted in favour of Bill 81 at first reading, voted in favour of Bill 81 at second reading, travelled with the committee for the public hearings on Bill 81, spoke about the fact that even with these changes there was still regionality, there was still geography, there was still population density, all of the things that they claimed at that time to be highly relevant. In Bill 81 they claimed it was still there, and this government passed it.

Given that this government passed Bill 81, how can you on the one hand agree with all the points we made and then on the other hand, at committee, a committee that is set out to make a report on the issue of referenda in Ontario, put those very things that you don't agree with in these points? You don't agree that there shouldn't be a rural voice. You don't agree that there shouldn't be that geography represented here. You don't agree with any of those things, so why would you include "50% plus 1 majority of voting"? Why would you include that without including clauses for regionality, for geography? This is a very basic question.

The difficulty I have and why I keep putting the question is that you have not had an answer yet. I expect an intelligent response to a question that I feel is relevant and is reasonable. I think my question is highly reasonable, given the nature of what you've set out to do. If on the one hand you introduce legislation and pass it in Bill 81 that says you believe in the hallmark of representational government, you cannot, unless you're doing it without realizing it, bring forward legislation to do with referenda, deal with a report that doesn't put those same aspects in it; you simply can't do it. It's not even responsible government. All of us have a responsibility to ensure that those things are going to come into the House, in any way, shape or form. It's our responsibility to see that we do ensure those voices.

Last week, we had the discussion about the binding nature. We said that really is the key; that if all referenda were non-binding, we wouldn't be having all of these discussions. The difference is, and as the member again clarified today, "Oh, no, we're fully intending these to be of a binding nature." Well, that changes the story completely. I don't think I'm going to have time today, but I know I will next week, to talk to the binding nature of this.

Mr Ron Johnson: I'm going to bring Hansard next week.

Mr O'Toole: Mr Chairman, on a point of order: I would like to put on the record and make sure that the member for Windsor-Sandwich is completely aware that most of what I've listened to here I have heard before. So thereby it's duplication.

Furthermore, Bill 81, it should be clearly on the record, which was the Fewer Politicians Act, replicated the very boundaries that the federal Liberal Party had conducted provincial-wide, country-wide hearings on, to redistribute representation in Ontario and indeed Canada.

In fact if a person were to look at the record — and we've heard much about California and its representation — you will find that in the state of California, with a similar population, we have 10 times the number of elected politicians.

I'm all for representation. I just want this on the record that the member is leaving the impression that this government in some respects is not reflective of the wishes of the people. In fact the very opposite could be said: A referendum is a direct democracy attempt. It's an attempt for each person's vote to have more significant hearings and weight.

The Chair: Mr O'Toole —

Mr O'Toole: I think if a full debate were to be allowed, we'd be clearly on record that that is the intent. We've been filibustered all afternoon so that there cannot be proper debate.

The Chair: Mr O'Toole —

Mrs Pupatello: I think it's time to throw him out.

Mr O'Toole: We're listening to one side, from the forests of Ontario right through to the very end of time.

The Chair: Thank you, Mr O'Toole.

Mr O'Toole: I, for one, am convinced that this has not been a productive use of members' time and I would ask that we adjourn to give it full consideration.

Mrs Pupatello: The Chair has called for order. Why don't you respect that?

Mr O'Toole: I certainly respect the Chair.

The Chair: Thank you for that point of order.

Mr O'Toole: I want the Chair to rule this member as being out of order. Mrs Pupatello has been insulting this committee this afternoon. Why have you not ruled her out of order for being repetitive continuously?

The Chair: Thank you, Mr O'Toole, for your point of order. I have, I think, twice cautioned the member, encouraged her to keep her comments relative to the point and not be needlessly repetitive.

Mr O'Toole: And she disrespected that.

The Chair: There is a standing order that precludes needless repetition, and I would, for the third time, encourage the member for Windsor-Sandwich to not engage in needless repetition.

Mrs Pupatello: Absolutely. Stick to point 8.

Mr Curling: Mr Chairman, on a point of order: I have been listening very carefully too. I have a great respect for you and for the position you hold, but I am amiss to the fact that while Mr O'Toole continued to ignore your calling him to order, you turn around reprimanding my colleague here, when he continued to speak.

The Chair: No, I didn't reprimand —

Mr Curling: No, you didn't reprimand him, but the fact is he continued to speak even while you were ruling. I would say it is a difficult job and I have great respect for you. I would say to Mr O'Toole that we should have some sort of control. I agree with your point of order. You were speaking, yes, and I will listen carefully.

Mr O'Toole: I appreciate you're agreeing with me.

Mr Curling: I agree with your rights. I agree with his right to speak. But I would like you to then say to the member that when you ask him to come to order, he comes to order.

Mr Boushy: Mr Chairman, on a point of order: I think it's 6 o'clock and it's time to adjourn.

The Chair: I think you're right and I adjourn the committee.

The committee adjourned at 1800.

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Mr Tony Silipo (Dovercourt ND)
Mr R. Gary Stewart (Peterborough PC)
*Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr David Christopherson (Hamilton Centre / -Centre ND) for Mr Silipo
Mr John R. O'Toole (Durham East / -Est PC) for Mr Stewart

Also taking part / Autres participants et participantes:

Mr James J. Bradley (St Catharines L)
Mr John Gerretsen (Kingston and The Islands / Kingston et Les Îles L)

Clerk Pro Tem /

Greffier par intérim: Mr Doug Arnott

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

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Journal des débats (Hansard)

Mercredi 30 avril 1997

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 30 April 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 30 avril 1997

The committee met at 1552 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Mr Peter Sibenik): Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Tony Silipo (Dovercourt): I nominate Mr Tascona for the position of Chair.

Clerk of the Committee: Are there any further nominations? In that case, seeing no further nominations, I declare that nominations are closed and that Mr Tascona is duly elected Chair of this committee.

ELECTION OF VICE-CHAIR

The Chair (Mr Joseph N. Tascona): Honourable members, it is my duty to call upon you to elect a Vice-Chair. Are there any nominations?

Mr Tony Clement (Brampton South): I would like to nominate Mr Fox for that position.

The Chair: Any other nominations? I declare the nominations closed. Mr Fox is duly elected Vice-Chair of the committee.

REFERENDA

The Chair: With respect to the matter of referenda and Mr Clement's motion of December 18, 1996, there are some other matters to consider. We have new exhibits, and I think you've all received these. The first is a letter to the Honourable Michael D. Harris, Premier of Ontario, from the Canadian Federation of Independent Business. The letter's dated February 20, 1997. There's also a memorandum to the standing committee on the Legislative Assembly from Philip Kaye, research officer, entitled Supreme Court of Canada Case Re: Quebec's Referendum Legislation, dated April 30, 1997.

At this time I would like to ask the legislative research officer to brief the committee on the past research and any new research.

Mr Philip Kaye: In terms of the committee's deliberations as it proceeds through the motion, there are three background documents prepared by the research service which may be of assistance. Just to review these documents, the first one is dated November 1996 and is entitled Revised Summary of Recommendations Re: Submissions on Referenda. This paper summarized the recommendations made to the committee during its hearings on referenda last September and November, as well as the submissions which were provided solely in writing. A list of the submissions appears at the end of that summary, on pages 46 and 47.

A second document is dated December 4, 1996, and is entitled Issues and Options Re: The Committee's Report on Referenda. This paper lists issues and options for the committee's consideration when giving instructions for the drafting of the committee's report on referenda. It is intended to be read together with the revised summary as the headings generally correspond with the headings in the summary. There are also page references to the summary.

A third background document which may be helpful to committee members is entitled Revised Overview of Provincial Referenda, dated November 1996, which was prepared by David Pond of the research service. This paper is divided into two parts: The first part lists all the national and provincial referenda which have been held in Canada and the last part, in a table format, compares legislation on referenda at the federal and provincial levels in Canada.

As the Chair remarked, I've also distributed a very brief memo today pertaining to the case that's currently before the Supreme Court of Canada which has been launched by Robert Libman, former leader of the Equality Party of Quebec. His court challenge questions certain provisions in Quebec's referendum law which state that during a referendum only a national Yes or No committee may incur or authorize expenses to promote one side or another. Arguments were presented to the Supreme Court of Canada in this case last week and I have attached two articles dealing with the case which appeared in the Montreal Gazette last week.

That's a summary of the background documents which I think the members may find most helpful as the deliberations continue.

The Chair: Thank you. The last day the committee met was February 19, 1997. At that time the committee was considering paragraph 8 of Mr Clement's motion. The committee had also agreed on that last day that after it had considered paragraph 8, it would return to a consideration of paragraph 7 and then paragraph 3.

Mr Gilles E. Morin (Carleton East): Mr Chair, you're new, you have just been elected; so is Mr Fox. I'd like to make a statement as to where the Liberal Party stands as far as the referendum is concerned. I think the Liberal caucus position on provincial referenda has been extremely clear. However, in case there's any lingering confusion about where we stand on this issue, allow me to reiterate our position at this time.

First let me remind committee members that the Liberal caucus does not oppose referenda per se. We are very supportive of referenda and plebiscites initiated by democratically elected local governments. That is their right as enshrined in their governing legislation as well as

a long-standing tradition in this province and indeed across the country.

What the Liberal caucus is opposed to is this government's motion to introduce provincial referenda on issues that we feel are more appropriately handled without resorting to the expensive and possibly manipulative referenda process that allows the government to walk away from its responsibility for what it does.

All democratically elected governments across Canada must have the courage to confront and deal with difficult issues and to make tough decisions, even those that might be unpopular. The Liberal caucus does not feel it is appropriate for an elected government to avoid responsibility for tough decisions by handing them off to the general public. You were elected to be the government. We believe that means taking responsibility for your own actions and not offloading them on to the general public.

1600

We've stated before in this committee that the Liberal caucus would be willing to support provincial referenda on neutral, non-partisan issues of general importance to all Ontarians. The referendum would have to be agreed to and formulated by a committee composed of all three political parties. In other words, the only way we believe this serious and potentially very important tool should be used is upon unanimous consent of all three political parties and on topics that are appropriate for referenda in Ontario, such as issues of national unity or other non-partisan issues.

We don't agree with what this government wants to do, which is to put to referenda various questions that will advance the government's own political agenda and allow it to walk away from responsibility for the consequences that result. We can't go along with that.

There seems to be some confusion among some members of this committee. On the one hand, they are pushing forward this motion to enshrine provincial referenda on all kinds of topics of interest to this government. On the other hand, they are members of a provincial government that has stated quite clearly that it will go ahead with its plan to amalgamate all of the GTA into a megacity, and you've done that, regardless of the results of a municipal referendum that was conducted.

What is it to be? If you believe in referenda, pay attention to what the municipal voters have said lately. But you've ignored that. Your inconsistency on this issue of referenda can be seen as hypocritical and high-handed by the voters of the GTA who just went through that experience, who believe their concerns were being totally ignored by your government.

Finally, I have to say that the Liberal caucus is very concerned that this motion does nothing to protect the rights of Ontario minorities. We are a multicultural and diverse society, constantly changing, and this motion includes no safeguards for the hatred, intolerance or prejudice that can be stirred up by referenda on unpopular issues. For example, what if this government put to the people of Ontario a referendum on the issue of bilingualism and funding French-language services? How would the rights of the francophone minority be protected? I could go on and give you other examples.

At the end of the day, the Liberal caucus will not be able to support any motion that would allow a democrati-

cally elected government to walk away from responsibility for tough decisions by offloading them on to the people who elected them.

Mrs Sandra Pupatello (Windsor-Sandwich): Mr Chair, I was hoping for further clarification in terms of your ascension as Chair of the committee. We haven't sat for about six weeks. We have a certain list, or at least an order, that we were going through. Can you just encapsulate for me what you expect the order to be today in terms of the continued debate on the 12 points that have been laid out?

The Chair: I did indicate that but you weren't in the room at the time.

Mrs Pupatello: You didn't start the meeting before we ended, did you? We weren't in orders of the day until I left.

The Chair: We started the meeting on time.

The committee was considering paragraph 8 of Mr Clement's motion. The committee had also agreed on that last day that after it had considered paragraph 8, it would return to a consideration of paragraph 7 and then paragraph 3. At that time, Mr Morin made a statement with respect to the Liberal Party's position on referenda. That's where we are.

Mrs Pupatello: In terms of how the voting process is going on each point, what is your understanding of how we're doing that?

The Chair: We're going paragraph by paragraph at this time.

Mrs Pupatello: Calling a vote after each point or deferring it until the end of all 12?

The Chair: There have been two that have been deferred for consideration at this time.

Mr Clement: On a point of order, Mr Chair: I think the previous Chair made a ruling, if this can be helpful to you, that this is one single motion. When the issue came up of whether to split this into 12 component parts, unanimous consent was denied by this committee to do so. There are no deferred votes. There are amendments that have been carried on the main motion but the main motion will be considered as a package. That's my understanding of the ruling of the previous Chair.

The Chair: From what I understand, that's correct.

Mrs Pupatello: Can you summarize that for me again?

The Chair: Mr Clement, do you want to repeat that?

Mr Clement: Sure. We will be voting on this motion at the end of our deliberations.

Mrs Pupatello: On point 8.

The Chair: On the entire motion.

Mrs Pupatello: You're not going to go back to the other points?

The Chair: Where there are amendments for each point, there have been votes on those particular amendments?

Mr Clement: That's correct, sir.

Mrs Pupatello: The two votes we've already had then were on points 1 and 2?

Mr Clement: Mr Chair, we've not had any votes on component parts. We've had votes on amendments that have been proposed by members of this committee. We have not voted on 1 or 2 or 3 or 4 and so on down to item 8. That is not correct.

The Chair: It's fairly straightforward. There is one single motion in front of you. That motion would have to be voted on in its entirety. You've been discussing paragraphs and there have been amendments to particular paragraphs, and I understand there have been votes on two particular paragraphs.

Mrs Papatello: Amendments, you mean.

The Chair: Amendments to those paragraphs.

Mr Silipo: On a point of order, Mr Chair: I just wanted to also be clear, to see if my recollection was correct, that while we are dealing with this as a motion, the import of the motion, however it ends up looking when we're finished with the discussion, is to give direction to staff to draft a report which would then come back to the committee for further discussion and approval or modification.

That's significant, certainly from my perspective, because as we've indicated, while we support the general thrust of what's in the motion and what's being done here, we have some significant disagreements with certain sections and parts of this. It would have been better, quite frankly, if we had had the ability to actually deal with votes on this separately, piece by piece. Given that isn't possible, although I presume it would still be possible, with unanimous agreement, to do that, then we would want to be very clear as to what it is we would be voting on and what the impact of that voting would be at the end of the day.

The Chair: This isn't mini clause-by-clause. We've got one single motion in front of us and the Legislative Assembly committee's mandate is contained within that motion.

Mr Alvin Curling (Scarborough North): I just want to get a full understanding of this. There are 12 different points before us here, and you're saying that there is one motion and when the vote comes down I'll be voting on all 12, which is very, very difficult. These are very complex things. You have to correct me if I'm wrong. Is it the understanding that this would be the case: When we go through this and the vote comes down and the question is called, I'm voting on all 12 at once? I just want to understand that.

The Chair: Yes, that is correct. The question, when it is put, will be on the motion as it stands, as amended. That's what we'll be voting on. There have been two amendments at this point, I understand, to the motion. You're voting on the entire motion.

Mr Curling: It's going to be quite something, I tell you. I can't see us agreeing on this. I just want to be practical. We know that the government has the numbers. If we are going to start in a way where there are some objections we have, we know what the result is going to be anyhow: The government will vote as they're instructed to. It can be quite difficult. Sometimes we can't, all together, even agree on one line. Can you imagine agreeing on 12 separate, independent points and amendments? Sometimes I think it's a fiasco as we go through this.

The Chair: I understand.

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Mr Clement: Just for the record, Mr Chair: Again, and I apologize to my colleagues across the way in the

Liberal Party, I have trouble understanding the coherence of their position, because it was they who denied unanimous consent to voting on separate items. I've learned to live with that denial by the Liberal Party and we have governed ourselves accordingly. For them to now suggest that they are unhappy with that is a reversal of their historical position on that issue.

Mrs Papatello: Mr Chair?

The Chair: Just to be clear, I've indicated what we're doing. I'm not going to change my mind, so where are we going here? Are we going to discuss paragraph 8?

Mr Clement: Sounds good to me.

Mrs Papatello: I think part of the difficulty, even at that time, was that we weren't receiving the amendments in advance. They were being read to us. It was quite difficult. We were writing them down the side of the page, saying, "Could you repeat that?" We weren't getting the copies of amendments in advance but we were having them read to us, so when we eventually went through the debate on the amendment, in the end none of us had official copies of what that point was, the amended version.

If the government has had this much time to come back to committee, perhaps you'd like to supply us with all of the amendments in advance, which gives us much better preparation time in terms of the discussion that would follow. Maybe the Chair can indicate whether you have amendments now for the balance of the 12 points. We'd really like to have them in advance and printed, hopefully.

The Chair: I understand.

Mr Clement: It is available in advance and printed; it's called Hansard. I encourage the honourable member to read Hansard.

Just to correct the record as well, Mr Chair, and I apologize to Mrs Papatello who was not on the committee at that point, but at the time when we were dealing with the issue of whether to split the motion into 12 component parts, we did have a clean copy of that in typeface that was available to the committee. I want to assure you of that fact.

The Chair: I understand. I've read the transcript. We haven't met for about two months, more or less, and that's where we are. I have no other amendments in front of me. Can we continue the debate?

Mrs Papatello: I believe I had the floor, Chair.

The Chair: Okay, Mrs Papatello.

Mrs Papatello: You're looking at point number 8.

The Chair: Paragraph 8.

Mrs Papatello: There are number of items I was hoping for clarification, for you especially as a new Chair, for the committee to understand our position, and to give some background as to its relevance in terms of the legislative history so far, since June 8, 1995, and what we view as the referenda legislation being a part and a tool of more to follow.

Point 8 specifically says, "Referendum questions would ask a clear and concise question, which would demand a yes or no answer, and would require a 50%-plus-one majority of voting Ontarians in order to pass."

As we spoke to this early on in the referenda debate, we discussed the whole issue of its comparability to the

argument we had regarding Bill 81, which discussed the changing of boundaries and changing of representation in Ontario as a whole. Just for your benefit, Chair, our discussion and concern on the whole question of referendum really centres around its eventual use in the Ontario Legislature. As well, currently in legislation, through the Minister of Municipal Affairs, Ontario residents have opportunity to hold referenda at will. There are various safeguards. There is regulation in place through the Ministry of Municipal Affairs and Housing that allows currently for referenda by cities, towns, regions, if you will. The guidelines also indicate that it needs to be vetted through the Ontario Municipal Board before those things happen.

Some of the members who come from the Hamilton-Wentworth region may be very familiar with the citizens' initiative that took place there but a few months ago and the results there. There were clear guidelines on how the citizen-initiated referendum would follow and they went literally according to that book when they initiated that. The outcome of that Hamilton referendum, of course, was 94% opposed to the amalgamation of that whole region into one municipality.

Again, when we saw the referenda that were held over the Metro Toronto megacity issue, there was some concern raised by government members that there was the very different nature of the referenda held in each of the six municipalities. But nevertheless, each one of those had some takeoff on the kind of referenda that can happen under the regulations through the Ministry of Municipal Affairs and Housing.

We bring that to the floor first because there are already examples in Ontario during the term of this government where referenda have happened. Unfortunately, the people in both of those communities have not understood the Conservative government's position regarding the outcome of those referenda. Clearly we understand that it was really more government-driven in terms of what was supposed to be enacted in those cities. In fact, even when the people wanted to have referenda, they didn't find support through the provincial government in order to have those. They had to go off on their own and learn the rules etc, in particular in the Hamilton case, because they had a very well-defined citizens' initiative that they ran in the Hamilton area.

When we're faced with the reality of what has happened so far since June 8, 1995, in the area of referenda, and the fact that we've sat on committee of the Legislative Assembly for some months now discussing referenda with various points being put forward that are directly and specifically in relation to what has already happened in Ontario and that then have been denied, we have a great deal of difficulty having further discussion on referenda at this committee.

That's a little bit of the backdrop in terms of the last year and a half of the Conservative record so far on the issue of referenda. With the Chair smiling that way, I'm supposing that he's heard this, maybe in the House, but certainly not at committee.

Again, when we talk about point 8, that is, a question that's "clear and concise," I would put to you that — all of us sat around our television sets that fateful night of

the vote for megacity — the fact that they could get the entire question on the chyron at the bottom of the screen would indicate to me that it was indeed a clear and concise question. They certainly followed that.

When we looked at the majority that was required in the voting, it certainly met that requirement. I can't imagine that we would go forward, with all due respect to the people of Ontario, and have a discussion that talks about what the Conservative government wants in a referendum when the people of Ontario have followed the law to the letter really, even if they knew that it was on this list and then they were completely denied in terms of being listened to.

We've had that kind of discussion with various members of this committee before. We put forward a number of questions. In particular, the question surrounding the majority of voting really speaks to the kind of representation that we have in Ontario, in Canada and comparatively in other jurisdictions that use that same, not one man, one vote, but a kind of representational voting that is not by population.

That as a discussion was made at the time with the Chair of Management Board when he brought forward Bill 81. We had that discussion that it moved closer to one man, one vote, but certainly in no way was one man, one vote.

Because we have that as a backdrop on what we see as appropriate representational government in Ontario, so much so that every Conservative member voted in favour of Bill 81, we can't go forward with discussion on referenda today when point 8 talks about the outcome of a referenda question requiring a 50%-plus-one majority of voting Ontarians, because it doesn't speak in any way to the regionality of where the votes come from, whether that implies a certain percentage of a vote — first past the poll if you're looking at the northern region versus just the Metro region. That as an issue must be addressed.

That as an issue also comes up in point 3, which I realize we're going to go back to. It's that same issue. We gave several examples of when that can be the most dangerous in terms of voting, regardless of what that referenda question is. Even if you were to cut Ontario in half, the whole northern half of Ontario, you can't allow a piece of legislation that allows all of those people not to have a say in the kinds of bidding that would be had through a referendum that the southern half of Ontario would want, but based on the rules that are laid out in number 8, that's what could happen.

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I would turn to the comments that the Management Board Chair, Dave Johnson, himself made on this very issue. I had the good fortune of debating this gentleman in London over Bill 81. It was clear that he recognized that they were moving a little further away from appropriate representational government. In fact, the ratio was going to be smaller: fewer politicians for more people. Naturally that indicates, at least in terms of a direction change, more of a direction towards representation by population.

But the argument he gave was that the boundaries were going to be equal to the federal boundaries. Without having the exact numbers, because those two probably

change monthly as our immigration numbers change in this province, we knew that on a federal level the total number of people which would be used as the divisive factor, or the number that is divided into, that number is actually made by virtue of a division into Canadian numbers, not Ontario provincial numbers.

If you compared Ontario representation versus federal representation, federal representation is actually stronger in terms of there being more representatives per population than in Ontario, where there are fewer numbers of people per population, which on first blush does seem strange given that the riding boundaries are the same. But it does speak to the kind of representation that we expect in Ontario. The people have deemed that to be fit.

There was quite a hue and cry, quite an uproar in the rural and northern areas when they realized that they were going to lose representation. There has always been — I would submit Conservative governments of the past recognized that need for regionality — regional issues that have to be addressed appropriately by a Toronto-based government, because Queen's Park sits here in Toronto. They do that by allowing those people to have a greater say even though they may represent fewer people than a typical Metro riding.

Because we agreed to that, we can't possibly go forward with further discussion in bringing forward a law that talks about referenda when those factors are not taken into account. For the very same reason that you would abide by that in how you have divided Ontario for representation here at Queen's Park, those same reasons apply as to why referenda are dangerous.

All of the research we've brought forward to date has indicated the danger related to having a question posed where the voting is not on a regional basis. You can have a complete distortion of the outcome simply based on where the population is more sparse and where you have a greater centralized population, such as in the area of Toronto. One that seems to be very clear was always the issue of the Temagami forest in the north.

If the northerners had a greater say, it may or may not have turned out differently, but the Toronto population being much stronger, if you were doing it determined by referendum, you might never cut one more tree from the Temagami forest in the north, because the people of Toronto would greatly outweigh the population you have in the north, even though the north, and in particular that region, requires that for economic development.

Our discussion then has to centre around the answers we get in response to those questions. So far, Chair, in the brief time we've spent together debating what I consider to be those absolute, fundamental questions that are at the heart of the problem with referenda, we haven't had any indication or anyone to address how you would get around that issue.

When my colleague opened, for the Chair's edification, the discussion on where we are in favour of referenda, he pointed to that specifically, that if it was a question that would surround francophone issues, something of that nature, you can be completely distorted in a response through a referendum. We simply cannot allow that to happen.

I wanted to point out to you one particular example of being on two sides of the same story. It's quite difficult,

I realize, because even the MPPs who come from that region are having some difficulty with the issue at hand in Hamilton. If I may, it was a case in point as to perhaps an appropriate use of referenda in terms of gauging what the community would like to see and yet a government that really was not clear in terms of wanting to listen to those very people.

I can't tell the date on this one; I believe it's April 3. The headline in this paper — I think it's centred in Burlington — is "Mike and Al: A Confusing Show." According to MPP Lillian Ross, who is certainly involved in that issue in Hamilton, the Premier, in terms of what to do in Hamilton, suddenly agreed in cabinet to a single-tier government if it could be done quickly. There was no apparent reference to consensus or anything else.

Some of us remember the last campaign. I do, particularly coming from Windsor where we had at one time a fairly contentious issue, the advent of casinos in Ontario. Windsor was going to be the first city to have casinos. What the Premier told us at that time was that we were not going to have one more — frankly, he said it from the curb of the airport because he never did leave the airport precinct to speak to Windsor people during the last election. But at the curb he did say, "I would not open one more casino without a referendum in the town that would be considered." He said very pointedly that he would not bring forward a casino without consensus and that you'd have to hold a referendum.

I guess he said "without holding a referendum." He didn't say that once the referendum was held he would listen to the answer, so he really didn't indicate whether the issue was binding or non-binding as a referendum item. He didn't specify that, but he did say that in order to expand the casino gaming industry, it would not happen without a referendum.

I think all of us know that a referendum clearly did not happen in Niagara Falls when the casino was placed there. I think all of us can safely say that had they had one in Niagara, given the economic development requirements there, it likely would have passed, but the fact is he didn't have one.

There is a similar instance happening currently with the charity casino industry now in Beaches-Woodbine. There is a strong indication that the people who live in Beaches-Woodbine are firmly against the idea of a casino arriving on their doorstep. They have not come forward with a referendum, nor is it likely that they're going to listen to one or allow one to happen if they can stop it. We would suggest to them that they may want to go forward to at least get some kind of gauging by their people on whether it's a whole community for or against casinos.

In any event, if we compare that to what he said beforehand, we can only surmise that his positioning is the same, that he is very strongly in favour of referenda. That naturally implies, or at least the people believe, he will respond and act accordingly based on the information that is brought to him through a referendum.

We've all been here in the House during this megacity debate and seen that wasn't the case. Some of the arguments that were put forward at the time I found quite strange. A member from Scarborough, Steven Gilchrist,

stood in the House one day and said that the turnout was so poor that it really meant nothing. I would suggest that the turnout was better than when he was elected, so if that were the case and he really believed it, he probably should resign because he has no right to be a member.

The Chair: Mrs Papatello, can you try to make your comments relevant to the motion?

Mrs Papatello: Absolutely, Chair.

The Chair: Paragraph 8.

Mr Clement: On a point of order, Mr Chairman: I'd be happy to respond to some of Mrs Papatello's concerns if you would be willing to cede me the floor. I certainly have a response at this time.

The Chair: I can't give you that on a point of order unless Mrs Papatello wants to give you that. But I caution you, Mrs Papatello, make it relevant to paragraph 8.

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Mrs Papatello: Sure, and the only point I guess for you to rule on is that the current referendum that just happened in Toronto would be a clear example of communities springing up and wishing to have referenda. What was the nature of that debate? What was the number required in that case?

As point number 8 says, it would clearly require a 50%-plus-one majority of voting Ontarians in order to pass. If we look at city-held referenda, of all those voting you had 85% of the people being opposed to megacity. In fact, there was a higher voter turnout than the last provincial election, which elected the very MPP who was speaking out against it, so it's highly hypocritical. It's very difficult, because if you believe on the one hand in the very principle of voting and that your vote is going to count in some way by some formula, then it absolutely is applicable in every other way in terms of how we vote, whether that be on issues or in general elections.

Mr Chair, just for your sake I might tell you that these issues, with a variety of other examples, have been put forward a minimum of three to four months ago and in all of these opportunities we haven't had any indication that there was a response. If we check Hansard, I've asked very pointed questions about it and to date I have not had any response. I would dearly like to see the response because then we could move forward into other levels of debate that would indicate to me that this isn't all for naught, that the government is seriously considering reviewing how they would bring forward referenda. To date, I haven't seen any indication of that, just sort of a moving forward, "This is what we're going to do."

As a greater backdrop for where referenda fit in in Ontario and where the government probably would like to move, I have to go back to its uses in other jurisdictions and why we recognize that the referendum question itself being clear and concise is an absolutely critical position. I say that specifically because there have been referenda pretty much the world over. Where they've been used — I need to read only one paragraph that's fairly brief but very explicit in terms of the concern of the question itself. This is Money, Media, and the Grassroots, by Betty H. Zisk.

She concludes, in the chapter called "Confusion and Rationality in Voting," that governments are able, and

this has been carefully researched, to evoke the response that they're looking for from the people in the very structure of the phrase, and that in many instances they compared items such as "Do we want a No answer?" and "Do we want a Yes answer?"

For those of us who remember the last national referendum held in Canada on the subject of Canadian unity, it became a huge debate on the question itself. Here it says, in point number 8, "Referendum questions would ask a clear and concise question...." We have to be far more explicit than that.

When we look at the states of Oregon, Illinois and Ohio, many of them actually put a distinction of the number of words allowed in the question. Some of them said that the referendum question could be no more 20 words. Just because it seems to be germane at the moment to this point — I think the Chair is going to find this particularly fascinating, actually — they were able to actually have a description regarding the title of the ballot, how it was put forward by title, how they would actually print the petitions that were being sent around, whether they could or couldn't have paid circulators.

They had even to address the very issue of how this thing went around the state. Because they recognized that it could be so taken over by interest groups that were looking for a particular outcome, they had to designate only paid circulators. The six states of Colorado, Idaho, Massachusetts, Ohio, South Dakota and Washington by statute restricted or prohibited the organizers of these initiative campaigns to paying petition circulators.

I find that fascinating that they had to go so far because human nature, being what it is the world over and century after century, changes little. I don't know if that's been your experience, Chair, but that certainly is what they found in the southern states. Oregon as a state eventually had to repeal the ban on paid circulators of initiative petitions. They had to do that because there was a ruling by a district court judge that the law imposing the prohibition violated the right of freedom of speech guaranteed by the first amendment to the United States Constitution because the law restricted the candidate's opportunity to get his views across to the public by circulating petitions and it restricted the discussion as well of issues that would normally accompany the circulation of petitions.

Let me give you a very pertinent example of how restrictive this kind of thing can be in terms of information. The legislative researcher, just at the outset today, indicated that you have a response from the CFIB, the Canadian Federation of Independent Business. They responded and gave us a number of percentages in terms of how they felt about referenda. They did so based on information that was sent to them. My question is, by whom? By the Conservative government, which would like to pass legislation.

If we simply go on research to date, when you are looking to evoke a particular response, it's all in the nature of how you ask the question. I would submit that if I were looking for a positive response from the Canadian Federation of Independent Business, if you want them to be wildly supportive of referenda, all you need to do is control how you give them the information. As

I was hearing the legislative researcher, Mr Kaye, give us the sheet, I wondered how they asked the questions. On the back of that it certainly is clear, in "Referendum Legislation," that it was put out by the government in a particular manner.

I personally would have liked to have been involved in getting information into this document for the very relevant reason that business people would be opposed to referenda. I would have very much liked to have had the opportunity to go to the Canadian Federation of Independent Business and suggest to them, "While you are informing your public," meaning their clients, "on how they feel about referenda, let me tell you some of the impacts of it."

How does that negatively impact on business? I would give them clear-cut examples of the California model when referenda were passed in that region, what the effects of that were. The moment they tied the hands of the state of California in terms of allowing municipalities to raise taxes, in many instances they had very much a negative impact on the business community.

I think the Canadian Federation of Independent Business would want to know those kinds of details before they holus-bolus sent that out to their clients and asked them to recall that, because the introduction, background and supporter information in each paragraph on the back of this today are the same that have been put out and really play to the populist theme out there today.

Historically, communities, governments, whether they be at the state level or the federal/national level, when they have entered into the discussion of a populist theme like referenda — and it's always put in the context of giving more power to the people and the like — it's always been the case that, precedent to that, that group itself has stood up clearly and said that there was a significant level of corruption at the heart of government and that's why they needed to move into a more direct form of democracy. Proponents of referenda who have been very active in this area have always professed that because the system is so bad, because government is so corrupt, because legislators can't be accountable any longer. That is always the backdrop precedent to the discussion of referenda.

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Probably the most famous of individuals on an election platform to give rise to the theme of going towards a more direct form of democracy was Adolf Hitler. In his platform in his first election, in his view —

The Chair: I would ask you to try to focus. I understand your feelings with respect to referenda. The mandate of the committee is to deal with the 45-page document, which you haven't referred to once. We also have a motion here. We're on paragraph 8, as amended. I would like to focus on that particular matter. These hearings started back in September 1996. The mandate of the committee was given June 27, 1996. Today is April 30, 1997. I'd like to focus on what's in front of us and nothing else. If you've got anything else to say on paragraph 8, say it. If not, there are other speakers who would like to speak.

Mrs Margaret Marland (Mississauga South): Mr Chair, if I may, you were speaking as Chairman. I would

just like to speak on a point of order. It is in our standing orders that we may not speak at length or read at length or quote at length certain material. I can't remember the standing order number. But I'm just wondering if the clerk could advise you of that standing order and I would ask you to consider it.

The Chair: Thank you for your point of order. At this point in time I'm going to allow Mrs Pupatello to continue, but I want her to be relevant.

Mrs Pupatello: Thank you, Chair. Of course I'm discussing specifically point 8 in terms of, "Referendum questions would ask a clear and concise question...." Just because of that, it in and of itself is a significant issue, "a clear and concise question." That is what refers me back to all of the southern states that use various forms of referenda, because it has been such a problem in the past. That is the reason that I hearken the committee back to a very famous individual who used referenda in the platform to be elected.

When he was first elected he went on again on that theme of failure of government, of corruption etc, but that he would go in a very simple and concise way to the people. He was able at that time to be very influential. At that time, whatever the economics were — and it usually is precipitated by terrible economic conditions in the countries or states where they arise — the natural place to look for in terms of blame is government.

The Chair: Mrs Pupatello, I'm not sure I understand. Are you suggesting that the question should not be clear and concise or are you suggesting that the question should be read another way? I'm not really sure what you're saying.

Mrs Pupatello: I'm suggesting that the very danger of a referendum question is wholly that whether or not we have a point in point 8 that says, "Referendum questions would ask a clear and concise question....," other jurisdictions have gone much further in their definition of how to ask the question, what the question can consist of: that it can only be 20 words, not more; that it needs to have a ballot title and that the title is vetted through a particular commission. It goes far beyond simply outlining for whoever's doing the referenda at that time to say, "Referendum questions would ask a clear and concise question...."

I'm suggesting that no matter how rigid other jurisdictions have tried to outline, far more rigidly than point 8 here — they have outlined the number of words. Gosh, if you counted every preposition and "the," that counts up to 20. But in those states it's very controlled, even in those cases —

The Chair: Those states have legislation for it.

Mrs Pupatello: Their legislation is far more rigid —

The Chair: Wait a second. We're not dealing with legislation here. We're dealing with a motion that is —

Mrs Pupatello: However, Chair, you and I are both familiar with the process, and that is that this is going forward to a report which is to be written, which comes back to committee, which eventually ends up as legislation. We've got to make our points on this somewhere.

The Chair: My only point is that we're not dealing with specific legislation here. I understand what you're saying in terms that there is legislation in other jurisdic-

tions that deals with that particular question, and it's a valid point, but let's be clear where we are at this juncture.

Mrs Papatello: My argument therefore is that other jurisdictions have had such a huge amount of difficulty dealing with how to legitimize the very asking of the question. In their attempts to do so they have set various parameters, including number of words etc. Even still, human nature will prevail. Even if you can put the largest number of parameters around those charged with delivering the question on the ballot, even so, I need to show you that there is a very specific manipulative way that those who are bringing them forward can evoke the response they want. Chair, it's highly cogent in terms of what we're speaking to today that even —

The Chair: You've made that point; I think I understand it.

Mrs Papatello: I'm glad you do.

The Chair: You've been making that point for the last half-hour and I clearly understand that.

Mr Clement: On a point of order, Mr Chair: In response to the member, I have some replies to assist the committee in replying to some of her questions. She forcefully tried to suggest that we were not replying to some of her concerns. I would like to reply to some of her concerns, but if her intention is to speak until 6 of the clock, it becomes impossible for me to do so. I'm wondering whether she can give me an opportunity to reply to some of her concerns by getting the floor and replying.

The Chair: I think that's a valid point, because you had suggested, Mrs Papatello, that you'd like some input from the government. Perhaps it might be in order to get some reply from the government at this point in time.

Mrs Papatello: If he'd like to do that. I just have more information to put out because the response I'm going to look for has to clearly be related to the kinds of examples I'm giving where it's been used in the past. How this current Conservative government would choose to overcome those obstacles has to be very clear.

The Chair: Don't you think it's important to get some input at this time? Just for my own edification at this point in time.

Mrs Papatello: That what?

The Chair: In terms of understanding where the government stands on some of your positions.

Mrs Papatello: Oh, this is for your sake. In that case, if the government member would like to intervene at this point, I just know that —

The Chair: He's just replying to you. It would come back to you, the floor. Is that all right?

Mrs Papatello: Sure.

The Chair: Thank you. My ruling is that you're going to reply with some of the information she was looking for. Is that your intention?

Mr Clement: My intention is to further debate by obtaining the floor of this meeting to reply to some of her concerns.

The Chair: She still has the floor. I thought it might be helpful at this point in time if you wanted to reply to some of the information that she was looking for so she could continue her debate on this point.

1650

Mr Clement: Sure. If that's your ruling, Chair, I'd be happy to facilitate the debate at this time.

I agree with Mrs Papatello that "clear and concise" is a phrase which needs further definition and certainly should have further definition in the legislation. If and when the legislation comes before this particular committee, I'm sure there will be a definition of "clear and concise" which would be more expansive than the one in the motion.

The motion, just to remind Mrs Papatello and to put it on the record, is simply an attempt to provide, as Mr Silipo said earlier, some guidance to the branch of your office, Mr Chair, in order to provide a final report that would eventually be tabled before the Legislature.

Certainly we did get some input as well from our deputants on "clear and concise" and how things work in other jurisdictions and, in order for the result to be a validly binding result, why that result need be clear and concise. I take the member's comment. It is nothing more or less than a repetition of some of the deputations we did receive on that issue.

With respect to the casino issue, I want to correct the record. Mrs Papatello did indicate that the Niagara Falls casino was opened without a plebiscite or referendum. In fact, there was a plebiscite or referendum, whichever term you wish to use — I think plebiscite is the more correct term in that particular case — in the municipality of Niagara Falls prior to the implementation of that casino. I believe it was in the 1994 municipal election where there was a plebiscite on the ballot in Niagara Falls on whether they were interested in having a casino. I did want to correct the record that way.

Of course, these are the types of issues — when referendums are necessary or unnecessary — we have already discussed in this committee. In item 2 I think we tried to articulate where referendums should be mandatory. In item 1 we have tried to say that discretionary referenda are also a possibility. We did not want to limit the Legislature of Ontario with respect to the ambit for discretionary referenda.

I also want to assure Mrs Papatello once again, and through her perhaps Mr Morin, who raised it earlier, that we do consider there are safeguards with respect to entrenched rights in our Constitution, in the Charter of Rights and Freedoms, and in the Ontario Human Rights Code which would certainly preclude any referendums on topics which are at variance with those documents. There is something. That is addressed in item 7. We have attempted to address that. We have listened to the concerns that were expressed to this committee on those issues from the Association canadienne-française de l'Ontario as well as the separate school boards and others that raised that issue and certainly endeavoured to reply to that.

I hope that helps Mrs Papatello in understanding that we have replied to the concerns of the deputations, which are of paramount importance to us. But her concerns are important as well and we have replied to those as well.

The Chair: Thank you, Mr Clement. Do you wish to continue discussing paragraph 8?

Mrs Papatello: The difficulty I have with this, which ordinarily you would think would be clarification, is that

it isn't. The very items we put forward that were clear, the government member chose not to speak about. That included the megacity referenda, all six of them, on average 85% opposed, and the Hamilton referenda, in total 94% opposed. If we looked at the kinds of rules and regulations used by the Hamilton area, they were very stringent in terms of following a set pattern on how to carry on a citizen-initiated referendum. They were very clear and very specific about how they did that.

I might mention too to the government member that in both instances they were able to look at legislation that currently exists in the Ministry of Municipal Affairs and Housing. There is legislation that exists today. That is a requirement to simply go to the OMB in terms of reviewing the question that is to be put forward. That too the government member has chosen not to comment on. Today, as a Windsorite, if I chose to initiate some kind of referendum on behalf of my city, or if perhaps the government of Kitchener-Waterloo would like to have a regional referendum on an issue, today, in 1997, before this goes to report, before this goes to some kind of other writing or author to send it back to this committee, that can happen. The government member has selected not to even discuss that issue and that always —

Mr Clement: On a point of order, Mr Chair: I did not respond to the issues that had already been dealt with by this committee. We have had ample debate on the topics that she raised, including the status of the so-called plebiscites in Metropolitan Toronto; the status of municipal plebiscites, which are different from binding referendums, as the member well knows, and the rights of municipalities therefrom; the difference between regional and province-wide referendums. Those are topics that we have already discussed at this committee over the last seven months and that is why I did not address those issues, just so you can let Mrs Pupatello know that.

The Chair: It's noted.

Mrs Pupatello: Regardless of those responses, it really doesn't solve the problem for us because I don't get a sense that there really is an understanding of how referendum can be used depending on how the people want it.

If we look at people who are really considered experts and leaders in the field to see what they have found, they've used highly relevant kinds of analysis to make determinations that they can conclude that a particular hypothesis concerning the confusion theory is always at work when you're speaking about referenda. They can also determine that a high-spending type of referendum will almost always be opposed when it's put forward to the general population in terms of a vote. They can also determine that what they consider low-spending proposals will almost certainly pass. Those are some real basics in terms of the question itself.

If the question has any kind of complexity to it — and I think our best example is the question the Quebeckers proposed in the last referendum; in terms of complexity, that was viewed as a highly complex way of asking the question — and those other two, a high-spending proposal and a low-spending proposal, those three items alone can influence the outcome, can tell the government that if they're going looking for a particular answer they're going to get the answer they want depending on how they

write the question. If the government needs a resounding no on an issue, they know how to go and get that, and if they need a resounding yes, they know how to get that.

The reason I'm very concerned, and this really happened in the days that we have spent here at committee, is that some of the government members speaking of their own initiative here around the table started throwing out examples of the kinds of referendum questions that would be put forward. The member for Durham East at that time said immediately, not with hesitancy, not with a pause, "What about a referendum on taxation?"

We knew this was there. We knew that was the burning question seated in the mind of every MPP on the government side that chose this wonderful committee where we'd have this fabulous debate on referenda. We knew that is the question the government members are just chomping at the bit to go public with. They want to go to the people of Ontario and say: "We're going to give you the power. We will give you, the people, the power and we will not be able to raise taxes unless it's voted for in a referendum." That is what is at the heart of all this.

I didn't say that vocally. I didn't verbalize that. I'd have been crazy to. I didn't say that. That came forward from one of the government members themselves in some moment of frustration when they were looking for any kind of example that they would actually use finally as the first question. When the legislation is in place and the law has been passed, what would the first question be that they would want to go forward to the people of Ontario with? We know what that is. That came forward from government members themselves.

1700

That's why the whole discussion of Proposition 13 in California historically became highly relevant. Then it became more relevant to me and made much more sense when we went through the discussions of Bill 84 and the firefighters, because that was the exact same experience that they had in California when they decided that they couldn't raise taxes unless they went to the people of California. They set that up themselves. It also gave them reason to say, "We can't fund certain things because you won't let us." It lets the government off the hook in terms of responsibility for what they will choose to fund or not. When they don't choose to fund certain things, it's not their fault. You the people, the people with the power through the local choice and referenda, won't let the government spend the money.

If we follow that through from its historical roots, we see that the California people did say that. They said that for one reason. When the question, which was in this case to be "clear and concise," was put to the people of California, it was put to the people in California knowing what response was required.

I might say too that they've had a significant return, term after term, of Republican governments in California. This is very notably an issue and certainly a part of the right-wing movement that's in place in California. It really does fit quite the pattern. The Californians too knew exactly what question needed to be put to the people in order to elicit the response that said, "No, you can't raise the taxes." That's exactly what happened.

What was very curious to me as we went through with Bill 84 here — we were very worried, as you know, about the privatization clause in Bill 84. That clause has not been amended and it's going to come forward to a vote shortly. They are in a pickle because municipalities, with the massive cuts they've been facing, have to choose how they're going to deliver firefighting services appropriately for their people. The government said, "We have to give them the tools to be able to do that." The tools are in fact privatization.

Even if the people had no idea that this would happen when Mike Harris came to the curb of the airport in the last election, because he didn't leave the airport precinct — he didn't say, "We're going to privatize your firefighting department"; he didn't say, "The cuts will be so massive you'll have to privatize to try to drive that bottom line down."

Mr Clement: On a point of order, Mr Chair: This is completely not on point with item 8. Item 8 does not deal with privatization, does not contemplate privatization, has nothing to do with privatization. I encourage Mrs Pupatello to keep her very interesting remarks to the issue at hand.

Mrs Pupatello: I'll try to weave this as best I can. As you know, I haven't got a lot of experience with this. I will try to tie this all into a neat argument in a moment.

The Vice-Chair (Mr Gary Fox): In a nice wrap-up.

Mrs Pupatello: Okay. I'll tell you why it's so relevant. Firefighting to me stands out in the minds of the public of Ontario as a very relevant issue. We need to understand historically how this has happened to us before. I know all of us in this room have heard, "If you're not aware of history, you're bound to repeat it." I didn't quote that properly. Do you know what that is? If you're not bound by your history, you're bound to repeat it. If you don't learn from your mistakes, you're going to make them again.

I'm trying to be a responsible representative here. I am trying to say that this has already happened in the history of a state. It is so trademark, the method and the pattern of the issues are so similar, that we would be foolish not to take a very close look at what happened. That's been my intent all along. I'm bound by responsibility to continue that.

Firefighting is the perfect example of the result of the question being "clear and concise," from point number 8 here on this page. The California Republican government, very right-wing at the time and still today, went to the people of California and said: "We can't raise your taxes, so we've limited our revenue, so we can't fund all the things we want to fund. Don't blame us because we don't have an appropriate level of firefighting service in California." That resulted in the privatization of fire service.

Mr Clement: On a point of order, Mr Chair —

Mrs Pupatello: If you'd quit interrupting, I'd be able to weave better. Okay?

Mr Clement: I apologize to Mrs Pupatello, but this is, as they say in the business, "déjà vu all over again." Her material is getting stale. We heard this three meetings ago. If Mrs Pupatello has something additional that she'd like to add, I'd love to hear it. But we actually heard this

line of argument, almost verbatim, three meetings ago, sir.

The Vice-Chair: Continue.

Mrs Pupatello: My greatest concern is that when he tells me he's heard it before and he just had the opportunity for a response, why did he not choose to give me the response that gave me some indication that he too had done a little bit of historical viewing to see how he would answer the questions that we'll be faced with? Because we know what they were faced with and we know what happened there and what they had to do.

Especially for the other members of the committee — and perhaps not this member because apparently he's heard it before — I will try to put my point across in a much better way. I've been thinking that what I need is a Dale Carnegie course because I clearly have not been as forceful or as persuasive as I would like to be on this issue. I'm considering doing that during the break during the summer, as well as perfect my French skills, because I thought that I would continue my discussion in French as well.

Mr Clement: On a point of order, Mr Chair: This is not on topic.

Mrs Pupatello: If I can go through the thought process all at once, I have a much better chance of tying it in properly so you understand its relationship.

Mrs Marland: On a point of order, Mr Chair: I don't think the member's thought process needs much continuum when she's telling us what she's thinking of doing with her summer. I don't see that what her plans for the summer are or whether she takes French-language instruction has anything to do with the matter that is before the committee at this time.

The Vice-Chair: Point made.

Mrs Marland: I think the member insults herself and all committee members with this kind of babble.

The Vice-Chair: Back to the topic, please.

Mrs Pupatello: Regarding point number 8 of the points at hand, we're at the "clear and concise" question. I'll try this again without interruption, I hope.

When the "clear and concise" question was put to the people of California, they said, "No, you cannot raise our taxes." This is very relevant because of history. It's happened so many times that they're actually able to evoke the response they're looking for. This is well documented; it has been researched. It has been used and manipulated, depending on what interest group you belong to, depending on how much money you have at hand to implement your campaign. We can evoke the response we're looking for.

That is the greatest danger of the question "clear and concise," as the government member hopes it would be, without setting any further parameters there. The Chair recognized later that this may come later in legislation. Even with the greatest of parameters that were put on other questions in the past —

Mr Bill Grimmett (Muskoka-Georgian Bay): Point of order.

Mrs Pupatello: Quit interrupting me.

Mr Grimmett: Mr Chair, if you'll check the standing orders, we had reference earlier on to a standing order that referred to the speaker referring to documents. I will

point out that in another subsection of that same section in the standing orders, speakers are not allowed to engage in "needless repetition." With all due respect, the current speaker has been engaging in needless repetition of her points. I believe that all the points she wishes to make on number 8 have been made. If there are new points, I would suggest that the speaker should move to new points, or perhaps we should go to a new speaker from another party.

Mrs Papatello: Mr Chair, I've been interrupted so many times on the same point, let me just finish it.

The Vice-Chair: Actually, he has a very good point of order. It does say that in our standing orders. Unless you have new points, we could move on to another speaker.

Mr Curling: On a point of order, Mr Chairman: What was the repetition you see in that? Because I wasn't quite sure that the attention that —

Mrs Marland: We could look it up in Hansard for you, if you like.

Mr Curling: Do you want to do that? Why don't you do that for me, Margaret.

Mrs Marland: I have more important things to do, thank you.

Mr Curling: I don't have any more important things to do than this.

The Chair: Order. Mr Silipo, are you going to be leaving at this point in time?

Mr Silipo: Yes. On a point of order, Mr Chair: Unfortunately, I'm going to have to absent myself from the committee shortly.

Mrs Marland: Oh, you're lucky.

Mr Silipo: I just want to state on the record that I have no objections to the discussion continuing. I know there isn't a requirement that all three parties be represented, but in case that was a concern for somebody, I just want to be clear that I don't have any objection to the meeting continuing in my absence.

Mrs Papatello: Do you approve of my finishing my example?

Mr Silipo: I'm in favour of people speaking as long as they need to speak, but I'm not the Chair of the committee.

1710

The Chair: Just to bring it back, I think Mr Grimmett had a point of order.

Mr Grimmett: Would you like me to repeat it, Mr Chair?

The Chair: It's dealing with standing order 23(c)?

Mr Grimmett: The standing order that refers to "needless repetition."

The Chair: That's 23(c).

Mr Grimmett: It would be my point that the current speaker, Ms Papatello, has been engaging in needless repetition of points, not only today but on previous days. She has repeatedly referred to examples historically in California. She's even tried to tie in references on the material that we're examining to Nazi Germany. I think those points have been made, we understand those points and she is engaging in needless repetition of her points on each of the individual parts of the motion.

What I would say, Mr Chair, is that it's incumbent upon you as the Chair to make sure that the debate

moves on and that the debate continues to be fresh. I would suggest that if the current speaker does not have fresh ideas that she wishes to put forward, we should move on to speakers from another party on number 8.

Mr Curling: On the same point, Mr Chairman: I listened very attentively to Mrs Papatello on this matter. I didn't find anything that's repetitious.

Mrs Marland: No, because you weren't here before. You're lucky.

The Chair: Order.

Mr Curling: I found quite often some emphasis that needed to be done. I know that sometimes it is very difficult for the members of the government, who may have had their conclusions already on the matter, it's painful to them to be hearing this, but to me it is not, because the member has made some very important points. At times, when I hear it a second time, when she repeats it, if so repeated, then it comes over crystal clear. I may find something that she said that is emphasis and he may find something that is repetitious. I would ask the member if he wants to point out what is repetitious and what is not new ideas. Then we'll be able to find out, Mr Chairman, if you'd indicate in your ruling what is repetitious in the member's remarks.

The Chair: I would say this: Mr Grimmett doesn't have to indicate that, but my reading of the transcript is that Mrs Papatello has been speaking at least the last two days we've had of hearings and we're in the third day with respect to a point. We're now on point 8 and, quite frankly, it is getting repetitious. If you haven't got anything more to say on number 8, I would like you to complete your submission or maybe someone else could speak in this committee.

Mr Curling: Mr Chair —

The Chair: No, Mr Curling —

Mr Curling: I thought you were finished; I'm sorry.

The Chair: I'm not finished. I'm dealing with the point of order. You've already spoken on the point of order. I'm making my decision here. That's my decision. If you have nothing else to say on point 8 that isn't repetitious, that we haven't dealt with and addressed, I would like to move on to another speaker. I'm going to be limiting this discussion if I don't hear something new.

Mrs Papatello: The difficulty I have of course is that I understand the frustration, but again I don't get any semblance of a —

The Chair: Mrs Papatello, it's not frustration. What we're dealing with here —

Mrs Papatello: Well, not on your part, sir. You're still fresh.

The Chair: No. I've read the transcripts. I understand the paper. What we're dealing with here is supposed to be a discussion, a debate, and one speaker is continuing to hold the point on one paragraph that you wanted to put your points on. I've heard the points on this.

What I'd like to do in my role as Chair is that we've got a situation where this committee was referred this matter June 27, 1996. It's now April 30, 1997. We're dealing with one paragraph here and we've dealt with it for at least the last day, and we're now on a full day also, and one speaker is speaking to it. I think you've had

more than a little bit of leeway with respect to the Chair in terms of speaking on this point.

Mr Clement: On a point of order, Chair: I value your judgement on this. I wanted to bolster your position by referring to the record. On December 4, 1996, Mrs Pupatello, in the context of her voluminous remarks, was quoted in Hansard as saying — and I'm quoting from page M-408 of 4 December 1996: "When they asked the question in Proposition 13, they would allow a ceiling, a cap, only a certain level of increase in property taxes, and during the tax revolt, for those in California, they said, 'We will only allow a maximum of 2% increase.'" I believe that is pre what she said here today; in other words, today it is a repetition.

I also refer, sir, to page M-478 of Hansard of February 12, 1997, quoting again Mrs Pupatello: "I probably don't have to explain to many of the members here what kind of divisive issue is the saving or not of forests in the north. I'll tell you that based on this, a citizen-initiated referendum on cutting trees in the north will probably always fail if the question relates around, 'Don't cut the trees.' The answer will always be, 'Yes, don't cut the trees.'" I believe that is a repetition of her comments here this afternoon, sir. Your remarks are quite on point and I support them.

Mrs Pupatello: On a point of order, Chair: The difficulty I have again, if I might finish, is that we did ask for an answer. At the outset I said that the rationale that's being used for the very issue of referenda has everything to do with a vote per person or a regional type of representation in terms of voting — at the very beginning just today, let alone months ago when I began. That is at the absolute heart of the matter. That is the most fundamental issue at play in the issues of referenda the world over, not just in Ontario, whether people have one man, one vote, or regional representation. I have not deviated from that most fundamental —

The Chair: Mrs Pupatello, it's not a point of order.

Mrs Pupatello: Let me finish. Chair, I have to finish my point of order for you to know I'm out of order.

The Chair: You haven't made a point of order. You're talking about —

Mrs Pupatello: Seeing as I have said that —

The Chair: No, Mrs Pupatello, listen —

Mrs Pupatello: Let me finish, Chair.

The Chair: No, I'm not going to let you finish unless I make my point here. You are basically debating the point that we've been dealing with today, which is referenda. A point of order is dealing with what the issue at hand is. What is your point of order?

Mrs Pupatello: The point of order is very clearly that the gentleman who just interrupted on several occasions, as well as the other members, to say that I was being repetitious —

The Chair: They're referring to standing order 23(c).

Mrs Pupatello: They consider that I'm being repetitious and that they have given me the answers and therefore why am I continuing to go back and repeat. That is at issue here — is it not? — that I'm being repetitious and they've had the opportunity and have addressed those concerns.

Mr Clement: On that point of order, sir —

Mrs Pupatello: Chair, I'm on my point of order. Just a minute here.

The Chair: Okay, in order. That's not a point of order. I'll make the decision what's a point of order. That's not one.

Mrs Pupatello: We can't have a point of order in the middle of my point of order.

The Chair: I'll make the decision.

Mrs Pupatello: Chair, if I may finish, I have yet to have an answer —

The Chair: No, you can't finish.

Mrs Pupatello: He claims I've had an answer. I haven't had any answers.

The Chair: Order here. You've had the floor all day with respect to speaking about something that I find starting to get repetitious. I've asked you, and I made a decision on this, if you've got something new to add, add it.

Mrs Pupatello: Do you have the floor now on your point of order or would you like me to continue?

Mr Clement: It's up to the Chair to decide things.

Mrs Pupatello: Are you calling a point of order or not?

The Chair: I'm trying to be fair here. Do you have something new to add on paragraph 8?

Mr Curling: On a point of order, Chair: I see the question the member is asking. We heard a point of order. She's asking, are you going to deal with that point of order or is she going to continue?

The Chair: The point of order was the same as Mr Grimmett's. I'm trying to give you one opportunity here to add something new. If you don't have anything new, I will move and give the floor to someone else who wants to speak.

Mrs Pupatello: On a point of order, Chair —

The Chair: Make it a point of order. I'm dealing with 23.

Mrs Pupatello: You have to acknowledge me if I'm going to start speaking. That's sort of the rotation when you're the Chair.

On my point of order, when you are making your ruling based on other people offering their points of order, and then you make a ruling, if it's concerning one of the particular members, do I have an opportunity to at least lay my case before you before you make your ruling?

The Chair: No.

Mrs Pupatello: Why wouldn't I? Of course I do.

The Chair: You're dealing with a point of order in terms of your trying to relive — on this particular point of order, they're saying that you're being repetitive. What you want me to allow you to do is to say, "I want to speak to it and prove that I'm not being repetitive." In the point of doing that, I find that not a point of order.

Mrs Pupatello: You haven't let me finish my point.
1720

The Chair: I've made a decision on that. I'm looking for you to add something new. If you have nothing new, then we'll move on.

Mrs Pupatello: Do I have the floor now?

The Chair: You have the floor to make a new submission with respect to paragraph 8. Otherwise, we can move on.

Mrs Pupatello: Thank you, Chair. On point 8, it goes on in terms of demanding a yes or no answer and as well requiring the 50%-plus-one majority of voting Ontarians in order to pass. While we reflected on that point exactly, we went back to the kinds of rejections and acceptances of referenda in the past and we looked at other jurisdictions to see what has happened, to see what kind of responses they've had, depending on the question, remembering that you can always evoke the answer you're looking for depending on how you ask the question.

In the requirement of the 50%-plus-one majority of voting Ontarians in order to pass, we have to reflect on how important it is for that outcome. All of us remember when we were talking about the national unity referendum issue in Quebec that out of that huge mass of people in Quebec it came down to but a 50,000-person difference between the Yes and the No. At that time, the biggest discussion of the day was, was it really a clear case of yes or no? When we saw those problems, you couldn't clearly say yes or no, because in fact the number was so close.

When you're looking at a kind of majority, that same discussion came up only recently in terms of the megacity bill. When a referendum was held in the city of Toronto, they said, "What would be the right level of yes to give the government an indication that this is the will of the majority of the people?" There are a number of examples where the majority in fact was shaved so close, just like in point 8, that 50%-plus-one majority of voting Ontarians, that the government doesn't get near the kind of indication it was hoping to get.

When we look at how referenda questions will be used by this government in the future, in all honesty we have had but one example of what kind of a question there would be. The only example that's come forward from government members is the taxation question, but there will be many others, because this referendum will allow for that kind of citizen initiative to come forward with whatever parameters are set out. But the answer, in order to give guidance to government, has to be the kind of an answer that gives a clear-cut guide to government. It begs yet another problem of the whole issue of referenda. We can find any number of them.

In some that were used in the States, they have had referenda on nuclear power issues, non-smoking proposals. I think the non-smoking proposal is an interesting one just to delve into slightly. If you went out to the public today in the city of Toronto — this is a very relevant issue because it just happened — if they put it to a referendum question, you're clearly going to get the answers based right along the lines with who smokes or who doesn't smoke, or who's in a family of smokers or not. The people of Toronto were so dismayed by the result of them posing a smoking ban that within weeks they had to reverse that decision. Those of us who have watched that issue could have actually bet and won money. We knew they were going to have to reverse that because the people who were involved in that issue knew it's the kind of an issue that is split right down the middle. There are many of these issues that are split right down the middle. The smoking issue is always one and it's always contentious.

When we look at the kind of referenda questions, again keeping in mind that it's always there and asked to evoke the answer that's being looked for by government, the response from the people in terms of the vote too has to be striking. The response, what percentage of yes or no, is the result of the question. That is just as important as what kind of question we're asking. I can ask you to go home and ask any of those questions.

Someone had speculated at one time about the role of the two school systems in Ontario. If you went into Essex county, where I come from, I would submit — and I'm guessing; we haven't had this kind of referendum issue of, would people be in favour of a Catholic system as well as a public system or would they be in favour of one public system, not Catholic? — what we would find probably, based on limited information, I know, is it's going to be right down the middle. You are going to have a clear 50-50 split on that kind of issue.

If we use that as the example in terms of what would happen if we asked the referendum question, governments, like the Conservative government here at Queen's Park, want to get a clear indication if they should make a major move. We've already learned, though, from the government members in discussing this that the whole purpose of having referenda is to make them binding. In allowing for a binding referendum on the issue of two fully funded education systems, it will be the question that a huge number of the populace would like you to ask, especially those proposing a one-school system. Some have called it a confederated model etc, but what it means is the dissolution of a funded Catholic system in Ontario. There is a constituency across Ontario that wants that question to be asked, that believes that when they ask the people they will look at the bottom line, regardless of any constitutional matters, and it would pass.

That would be an incredible position for the government to be put in. On the one hand, you would have the public, 50% plus one — as indicated here in point 8, you "would require a 50%-plus-one majority of voting Ontarians in order to pass." Let's assume you have 50% plus one of Ontarians eligible to pass. First of all, you are talking about 50% plus one of those who can vote; then you're talking about 50% plus one of those who show up to vote; and then you look at the result.

That is the only reason, Chair, that I brought into this discussion the comments made by your colleague from Scarborough in his discussion in the House opposing the referenda for megacity. It was exactly that point, the 50%-plus-one majority issue. He was addressing that, only he was on our side of the issue when he stood on that example of the megacity bill and said that the referendum that was held in Toronto didn't matter because the results didn't show anybody what it was intended to show. He suggested that there was such a poor turnout of the vote —

Mr Clement: On a point of order, Chair: That's a repetition of two hours ago.

Mrs Pupatello: I'm on 50% plus one.

Mr Clement: On the same point of order: I would encourage members and the Chair to look at pages M-492 to M-496 of the committee presentations from February 19, 1997, where Mrs Pupatello touches on exactly the

same points she is touching upon now. Sir, it's my opinion, not your opinion, but I think we're being mocked here and I would very much like to see some rotation.

Mr Grimmer: My point of order is virtually the same, Mr Chair, except I would say that the standing order that refers to needless repetition, in my opinion, should get at the issue of when speakers have exhausted their points on a particular issue. I believe that is the case here. Mrs Pupatello has clearly exhausted the points she wishes to make and I don't hear anything new on number 8 coming forward. I would ask you to rule that we move on and allow other people to speak to the substance of the issue.

The Chair: I'm not prepared to do that at this time, but I would comment that with respect to your position with respect to paragraph 8, Mrs Pupatello, it deals with 50% plus one.

Mrs Pupatello: That was what I was talking about.

The Chair: We're looking for your position. I think you've stated your position on that. I've heard about Mr Gilchrist before and I've heard it today, so I don't know what new ground we're covering here.

Mrs Pupatello: Does that mean I can't say the word "referenda" again because I've already said that once today?

The Chair: No. You've referred to different jurisdictions a number of times. You've referred to the referendum debate with Mr Gilchrist.

Mrs Pupatello: Not on this matter I haven't.

The Chair: Yes, you have. We're still on point 8.

Mrs Pupatello: I'm speaking specifically about those comments as they relate to the majority required to win the referenda. That wasn't even the point I was at the last time I used that example.

The Chair: We're still on point 8.

Mrs Pupatello: But there are several points to 8. It's the largest paragraph on the page.

1730

The Chair: Mrs Pupatello, to be fair, if you decide to choose to talk about each word and then decide to refer to the same stuff we've been through before — we're dealing with point 8. That's what we're dealing with.

Mrs Pupatello: If you look at point 8, there are several items within point 8 that are relevant to referenda, and each of its own accord has everything to do with the outcome of their use. One, at the beginning, refers to the makeup of the actual question. It's followed by a comma and an "and" which indicates that after "and" it's another thought or phrase, and that second part talks about the ability to win. What is the past the post? What's the post you need to pass in order to win? That's clearly a separate item entirely. Then it talks about the effect of the passage, so that number 8 not only talks about the question, what you need to win the question; it also talks about how you introduce it as law in the House. Those are clearly distinct items.

If I were looking at separating out points, there would probably be some 20 or 25 points on the page, because those, each and of themselves, are their own areas of discussion. I can't be bound by it all being in point 8. They are completely separate parts. The actual implemen-

tation of the law is a completely separate item from how you determine a victory of the referendum and is completely different again from the very nature of the question itself.

Chair, I'm going to ask your indulgence on that because there are several points that all happen to fall into point 8 but are all completely different. One speaks of the implementation of law, another speaks of the development of the question itself, another talks about the very issue of what you consider a win.

The Chair: I understand that, but I'm just saying to you that you're not covering new ground here. It's the same point I heard before. I would like to hear what you have to say on paragraph 8, of course, and you continue to speak to it, but if you're going to refer to the same jurisdictions, the same speaker in the referendum debate, I don't consider that new ground.

Mrs Pupatello: Thanks. I guess I'm going to have to keep putting in the context of the part of 8 that I am speaking to, which is what you consider a win. Does a member consider a win based on more than 50% yes or no in a particular referendum? I ask that question rhetorically, because in my view, according to what I read here, it is the government's intention that 50% plus one means it wins. I think we can all accept that 50% plus one of those who vote, of the population that is eligible to vote, means the question wins. I think we assume that.

In the instance of megacity, at 85% opposed, therefore No won. I have to say that it's ludicrous for us to sit here, and the irony of us going through this again and again, based on the fact that it was a government member who said it didn't really mean anything, that hardly anybody went out to vote —

Mr R. Gary Stewart (Peterborough): That's the most important thing you've said all day: that it's ludicrous to sit here.

Mrs Pupatello: I don't know how many members in the community that Mr Stewart represents actually voted on that day, but if you're talking about 50% plus one of the people who live and are eligible to vote, then do you look at that? Do you also look at those who actually come out to vote that day? If we only went by, as was suggested by Mr Stewart now, or by whoever in the House on other issues of referenda, then any one of us, unless you happen to be Bruce Crozier from Essex South, who gets 75% of the vote every time he goes to the polls — I don't know how many of us can actually say that we have 50% plus one of our voting population.

Mr Stewart: It's called responsibility to vote.

Mrs Pupatello: I agree. That's exactly my point. Mr Stewart helps me make my point: It is the population's responsibility to vote, and the people who voted in that instance, the megacity one, the result was astounding. In some communities it was 84%, in some it was 75%, but Mr Stewart, the point was still made that those numbers didn't reflect the population that came there. That's what we were told. They didn't reflect that population. But they did, and not only did they reflect that population, they reflected that population more than the committee members who sit at this very table today. Because if we use that very same logic, not a one of us deserves to be sitting here representing our areas.

But that's not how we look at it. In fact, when we go to vote for our elected representatives, unfortunately you — I don't know if we've ever had 50% of eligible voters actually getting out to vote. I don't know if we ever hit 50. In my riding it's usually between 49, 48, 50 or something.

Mr Clement: To correct the record, it's around 75% province-wide.

Mrs Papatello: Percentage of eligible voters that get out?

Mr Clement: Yes.

Mrs Papatello: You're going to have to check that. I've never seen 75% of eligible voters out to vote.

Mr Clement: I guess we'll see it on June 2.

Mrs Papatello: I beg your pardon?

Mr Clement: We will see it on June 2.

The Chair: Mrs Papatello, could you just speak on paragraph 8, please?

Mrs Papatello: I'm talking about the requirement of the 50% plus one.

The Chair: No, you really aren't referring to the paper. You have not referred to the paper once. You very rarely refer to the paragraph. Come on.

Mrs Papatello: Point 8, requiring "a 50%-plus-one majority" —

The Chair: I've heard that three times in the last half-hour.

Mrs Papatello: That's from point 8. You just said I never referred to point.

The Chair: Come on, why don't you just speak to the paragraph if you've got something to add? It would be very helpful.

Mrs Papatello: I am. I'm trying to add the fact that not only is it convoluted to get a real sense of direct democracy through use of this "clear and concise" question, it also begs the question that if you have a 50%-plus-one majority voting —

The Chair: Mrs Papatello, we have dealt with that particular reference. It has been exhausted.

Mrs Papatello: Which reference?

The Chair: The very first sentence of paragraph 8.

Mrs Papatello: I'm moving on from there.

The Chair: It has been exhausted.

Mrs Papatello: Maybe not.

The Chair: The amendment has been exhausted. I don't know what else we're dealing with.

Mrs Papatello: I'm talking about a 50%-plus-one majority required to win at the moment.

The Chair: I know, and we've dealt with that.

Mrs Papatello: Who dealt with that?

The Chair: Through your submissions. I don't know how many more submissions you're going to make on the same point.

Mrs Papatello: I haven't made it yet. I'm in the midst of —

The Chair: You've made exhaustive submissions on that point.

Mrs Papatello: I recognize that personally you're not convinced. That's very different from —

The Chair: I haven't taken a position on this. You've taken a position. We understand what your feelings are on paragraph 8. I'm just trying to keep the debate

moving. I'd like to hear from more speakers. If you wish to speak more, and you have new ground, speak, but I'm just saying to you, I've listened to that first sentence for the last half-hour to maybe the hour.

Mrs Papatello: I wish I had the Chair's ability to be so eloquent in terms of his speaking abilities. I, on the other hand, am just a poor new member with hardly that kind of eloquence, but I'm working on it. I'm going to get there one day.

My position is clear. Obviously, you know how I feel. Knowing how I feel on the matter is hardly relevant and frankly no one at this table cares what I think. What does matter is that people at the committee clearly understand that implementing things that have such dire consequences in the long term really matters.

If I can give you a clear example that specifically relates to point number 8, which is the 50%-plus-one majority of Ontarians who would vote on a particular issue, I attended an event in Windsor at the South Asian Centre —

The Chair: Mrs Papatello, could you please speak to paragraph 8? I don't want to hear about an event at the South Asian Centre, okay?

Mrs Papatello: Chair, there's only one way to make a point, and that is to draw from various experiences to make my point on point 8.

The Chair: No. Could you just speak to the point?

Mrs Papatello: What do you expect me to say, if I can only read the paragraph?

The Chair: I expect you to speak about paragraph 8 in terms of the language etc, not talk about events you've attended.

Mr Curling: On a point of order, Mr Chair: Are you ruling her out of order if she uses an example to make her point?

The Chair: I'm trying to keep her relevant to the debate here. That's what I'm trying to do.

Mr Curling: Oh. I was wondering because she just said, "for example," and you said you don't want to hear her example. I just wondered if you're ruling her out of order.

The Chair: An example of an event she attended.

Mrs Papatello: You don't even know if it's relevant until I finish the point.

The Chair: Mrs Papatello, you've spoken about the Hamilton referendum, you've spoken about the Toronto referendum, you have quoted to me from Adolf Hitler and the referenda in Germany.

Mrs Papatello: Actually, I didn't quote to you from that.

The Chair: You've also spoken to me about southern states. Now you want to tell me about an event you attended in south Windsor.

Mrs Papatello: No, it was in Windsor. It was actually at the Giovanni Caboto Club in Windsor. I know you know where that is, Chair, and the event was a South Asian Centre event, so you need to hear the point to see how relevant it is to what we're talking about today.

The Chair: Is it about referenda?

Mrs Papatello: It's specifically about point 8 and it's about the requirement of a 50%-plus-one majority in order to pass. If you'll let me make the point, you'll see how relevant this is.

Mr Curling: Please tell me about it.

Mrs Papatello: I want to you to hear me.

The Chair: Mrs Papatello, I consider this process to be very important. If you really believe this event relates to paragraph 8, I'd like to hear that, but if it doesn't, I don't want to.

Mrs Papatello: Thank God.

1740

Mr Clement: Mr Chair?

The Chair: Yes, point of order.

Mr Clement: Yes, I'd like to move that this question be now put.

Mrs Papatello: Is this a point of order? I have the floor.

Mr Clement: I didn't call point of order; I just said, "Mr Chair."

Mrs Papatello: I had the floor.

The Chair: Mrs Papatello, with a little respect here, he said, "A point of order," and I've asked for it, okay?

Mrs Papatello: I didn't hear that.

Mr Clement: No, I did not say "point of order," sir.

The Chair: What did you say?

Mr Clement: I said, "Mr Chairman," and you said, "Yes," and I said, "I move that this question now be put."

Mrs Papatello: You can't do that unless you have the floor. I currently have the floor until he takes your point of order.

Mr Clement: On a point of order, Mr Chairman: You said, "Yes," which usually denotes that I have the floor.

The Chair: Mr Clement, it's not in order because you haven't got the floor.

Mrs Papatello: Sorry. I'm glad the Chair at least recognizes that if I could just make the case, you would see the relevance to the 50%-plus-one majority required to win.

Mr Curling: Tell me about this example you have.

Mrs Papatello: I was able to speak to a group, and the group was made up of the South Asian community in Windsor and they were having their annual banquet. The discussion of the day was multiculturalism. The fear among the multicultural group is always around the majority versus the minority. Why is that relevant to how a question passes or not? In the instance of multiculturalism the debate becomes one of how multiculturalism will continue to survive in the face of government cut-backs etc, changing ways to fund those kinds of issues.

This particular group was concerned because they immediately saw the relevance of questions that are put to the majority in a manner that allows the response to be evoked that the government is looking for. They, as part of the minority, get a sense of, "What will happen to us when we clearly would be a group?"

I was talking about referenda, in that instance specifically about the area of education. As has been the case in other jurisdictions, public education is typically the first order of the day to find new cuts when they have referenda legislation in place. The single most profound danger to multiculturalism is not bringing in our immigrant children in an appropriate manner, and the single best defence for that is an exceptional public education system.

When we know that as a result of using a referendum question that is put to the people requiring a 50%-plus-

one majority, in the instance of asking a question, such as one on taxation, that you know will pass if it's asked, you can predict that even today as we speak — we understand that \$1 billion is being suggested to be drawn from public education. We know that's coming down the pike. We know that's going to be the single best defence for new immigrant children in our community, in my community. That is a significant problem that we can foresee, a major concern, that is the single most dangerous thing that we have coming where multiculturalism is concerned.

If we're not able to integrate new Canadian children into our communities via a well-funded public education system, and we're not able to do that because we put a question to the public about taxation through a referendum which required a 50%-plus-one majority of the vote in order to pass, that is the greatest danger that we bring to multiculturalism in Ontario.

Chair, tell me how relevant that is to this discussion of 50% plus one. I think all of you are quite impressed that we were able to make that discussion. That is the case. Much as you don't want to look at those kinds of details — I know the member for Sarnia can relate to that quite well, as can I. If we know what the outcome is with the tools you're giving the Legislature, we've got to stop the tools before they get there. At the very least, you have to be prepared to offer the kind of tools with significant protections. That's my fear. When I see a 50%-plus-one majority, that is not the kind of tool that's required —

The Chair: On a point of order, Mr Chair: I draw your attention to page M-409, the debates of this committee on December 4, 1996, when Mrs Papatello said, "When we look at education, we have to look specifically to Toronto." She goes on to talk about increased education costs: "There are outside factors that continually influence the education system. You have the highest number of immigrants who come here. The larger majority of them..." etc. This is repeating what we had discussed on December 4, 1996, and I respectfully request that we go to rotation.

The Chair: Mrs Papatello is making her point with respect to this issue. It's a different day. I'm quite prepared to listen to Mrs Papatello at this time.

Mrs Papatello: Thank you, Chair. I have to say how pleased I am, because I know that you too wondered how we were going to draw the South Asian Centre into the discussion of referenda. In fact it was highly relevant in the end; I think all of us would agree. I will tell you that the people who were listening that evening also found it highly relevant. Moreover, people who are in the education system never made the link between the danger of referenda and their use potentially and the effect on the public education system. I'm more than pleased to help make that connection for people.

What it specifically means in terms of its use and the majority of voting Ontarians in order to pass is that I don't see the safeguards. Anyone who has spoken to date on point number 8 itself, in particular relating to a 50%-plus-one majority of voting, I haven't seen —

Mr Stewart: We haven't had a chance to speak to it.

Mrs Papatello: In fact —

The Chair: Just a moment, please.

Mr Stewart: My apologies for interrupting.

The Chair: At last meeting, Mrs Papatello, you made a request for a ruling on a matter and I've got it here. I'd like to read that if it's all right with you.

Mrs Papatello: Thanks.

The Chair: At our last meeting on February 19, 1997, the member for Windsor-Sandwich (Mrs Papatello) requested that the Chair make a statement on the authority of the Chair with respect to maintaining order in a standing committee of the Ontario Legislative Assembly.

As members recognize, the role of the Chair is to maintain order and decorum and to decide all questions of order and procedure. In this respect, the powers of a Chair of a standing committee are substantially the same as those of the Chair of the committee of the whole House. The Chair's decisions are not debatable but may be appealed to the Speaker by a majority of the members of the committee.

Pursuant to the standing orders, the Chair of a standing committee has a limited number of options when faced with a situation of disorderly conduct by a member.

The Chair may recess or adjourn the committee.

The Chair may ask the member to leave the room, but the Chair has no power to enforce this request.

In fact, any member of the House who is not a member of a standing or select committee is guaranteed by standing order 126 the right to take part in the "public proceedings" of any committee "unless the House or the committee concerned otherwise orders." (This does not grant the right to vote or to move a motion, nor to be part of a quorum.)

In no circumstance can the Chair of a standing committee name a member.

As a last resort, the standing committee itself may choose to report the circumstances of disorder to the House. Standing order 120(d) states:

"Disorder in a standing or select committee can only be censured by the House on receiving a report from the committee."

As members know, pursuant to standing order 130(a):

"The report of a standing or select committee is the report as determined by the committee as a whole or a majority thereof."

Ontario's rules are comparable to those of the Canadian and the British Houses of Commons. The 6th edition of Beauchesne's Parliamentary Rules and Forms states on page 55:

"No power to suspend members has been given to those who preside in the committees of the whole House and in all other committees.... The power to censure those whose conduct has been reported to the House resides with the House itself and not with the Speaker."

"...Disorder in a committee can only be censured by the House when it has received a report from the committee. No such power has been delegated either to the Chairman or the committee."

On pages 602 and 603 of the 21st edition of Erskine May's Parliamentary Practice, it is stated:

"A standing committee has no power to punish one of its members for disorderly words, contemptuous conduct, or any other offence committed against it, but can only report the offence to the House. The provisions of

standing orders numbers 42 (disorderly conduct) and 43 (order in debate) have not been extended to standing committees, and the Chairman has, therefore, not the power with which the Speaker and the Chairman of a committee of the whole House are invested to order a member who is guilty of disorderly conduct to withdraw, or to name a member for disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House or otherwise."

Supported by the rules and precedents of this House, the Chair has already recessed this committee once in a disorderly situation, and I would do the same in a proper case.

I would expect, however, that all honourable members — being all honourable members — would not test the limits of the Chair's authority. As the Chair stated last day, I would expect members to maintain a standard of decorum that is commensurate with our responsibilities here in this, one of the pre-eminent committees of the House. This is the committee that the House has named after itself, the committee to which the House refers matters of order, decorum and ethical conduct. We have been, for the most part, one of the least partisan of committees. I call upon members to endeavour to work together. While complete agreement may not always be possible, members should show respect for each other and for their parliamentary institutions.

1750

Mrs Papatello: Who wrote that, Chair?

Mr Clement: Who writes your stuff?

Mrs Papatello: I do.

The Chair: That's the ruling. So if you wish to continue —

Mrs Papatello: Chair, were you here during that portion? I don't think so.

The Chair: I was not the Chair or in attendance when the ruling was requested, but I have read the Hansard and I understand that you requested a ruling. That's what I've just read. That's the ruling.

Mrs Papatello: Thanks, Chair. I appreciate it, actually. It was over quite a kerfuffle that was happening at committee at the time. I'd be pleased to give you some more historical data at some other time on that issue.

The Chair: I've ruled on it, so maybe you'd like to debate what we're dealing with.

Mrs Papatello: What's your ruling on that?

The Chair: What I just told you. You wanted to know specifically, and if you want me to refer to that —

Mrs Papatello: May I get a copy too of the ruling?

Mr Clement: Mr Chair, the speaker isn't speaking. I would request that we go to rotation.

Mrs Papatello: Do I have the floor? Are you finished, Chair?

The Chair: You requested of the Chair, M-490: "As a footnote, Chair, I wonder if we could have some research in terms of precedents on this issue; if this has come up before, what the Chairs of the day have done in order to deal with it, because I understand there's a little bit of comparison." The Chair undertook to have a response for you the next week.

Mrs Papatello: Oh yes, I'm not questioning that at all.

The Chair: That's the response to that. I have that.

Mrs Papatello: Thanks.

Mr Curling: I'm just wondering, Mr Chair, keeping in mind that Mrs Papatello has the floor when we resume, if we could stand adjourned until next week.

Mr Clement: On a point of order, Mr Chairman: We're not at 6.

Mr Curling: I'm making a request. What are you jumping into this for? I just made a request, if he could entertain that.

The Chair: That's a point of order, Mr Curling?

Mr Curling: I'm just requesting the Chair if you'd accommodate that.

The Chair: There'd have to be unanimous consent on that.

Mr Clement: What's the question?

The Chair: He would like to adjourn at this point in time and leave the floor with Mrs Papatello.

Mr Clement: No.

The Chair: There's not unanimous consent, so Mrs Papatello has the floor.

Mrs Papatello: We were speaking just a moment ago — I know I was right on message earlier, before that.

The Chair: I believe you were on paragraph 8.

Mrs Papatello: I was specifically discussing the 50%-plus-one majority of voting Ontarians and just that very simple example, in terms of an ethnic community back home, how relevant that must be and how really fearful they are of a 50%-plus-one majority of voting Ontarians.

It's not for the kinds of questions that seem obvious to government members that have been expressed earlier, like religious items or ethnic items. They're not obvious items like that, so we don't even use as an example that there would actually be a question on a referendum ballot that would say something that is clearly racist in nature. We're not even going to go there because obviously it's never going to be so blatantly placed on a ballot.

The concern for a minority group is that in other very subtle ways and through systemic types of things we start getting at the heart of what does affect minority groups. There are all kinds of examples of that happening.

I understand that we're getting close to 6. I promise you that I will be bringing back all those examples of those systemic types of things, but the one that is most obvious is the public education one. That's why I have repeated that as an example, because it is so relevant, in particular to immigrant children.

The 50%-plus-one majority of voting: I'd like to give you an example of when that was not used by a Conservative government, just so I can show you that, depending on what the issue is, you don't want to settle for 50% plus one.

Chair, I want you to note the newness of this item and hope that you'll put an asterisk beside that as you go through your Hansard, which I know you review on a weekly basis.

This was specifically to do with the accord that took place under Joe Clark's leadership in Canada. It was the whole discussion about what the expectations should have been in terms of the outcome. They were looking province by province, so this was a national issue but it's a perfect example of where they would not accept less than all 10 provinces saying yes. It wasn't a question of 50% plus one as the majority, as is being outlined here, but it's very clearly an issue where 100% was required, no less.

When you heard Mr Morin's discussion earlier on — in fact, weeks ago we all suggested that there are certain kinds of issues where there is a unity required, 100% participation required. Such was the case that Joe Clark, the Conservative Prime Minister at the time, found. What he said was —

The Chair: Are you speaking about the Constitution, Mrs Papatello?

Mrs Papatello: I'm speaking about a referendum.

The Chair: Oh, a referendum, not the Constitution. Okay.

Mrs Papatello: He said —

The Chair: I think it's 6 o'clock so we'll adjourn until the next day.

The committee adjourned at 1757.

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**Standing committee on
the Legislative Assembly**

Referenda

**Comité permanent de
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 7 May 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 7 mai 1997

The committee met at 1528 in committee room 1.

REFERENDA

The Chair (Mr Joseph Tascona): It's 3:30 by the clock, so the meeting's in session.

Interjection: It's 3:32 by the clock.

The Chair: It's 3:32 by the clock. We have a quorum, so the meeting is in session.

Mrs Margaret Marland (Mississauga South): Mr Chair, I move that the question be put, the question that is on the floor.

The Chair: The question that would be put would be the vote on the motion, as amended, in its entirety?

Mrs Marland: Yes.

The Chair: My decision is that the motion is in order. The question is now, shall the question now be put, which is to vote on the motion, as amended, in its entirety? Agreed.

I put the motion: Shall the motion, as amended, carry?

Mr John R. Baird (Nepean): Could we have a recorded vote?

The Chair: Okay.

Ayes

Baird, Boushy, Clement, Fox, Marland, McLean, Tilson.

The Chair: I declare the motion carried, as amended.

Mr Tony Clement (Brampton South): The next stage is apparently, Mr Chair, as was agreed to by the last subcommittee. The plan then was for the subcommittee to work with your office to proceed with the writing of a report which would then come back to this committee. I would amend that recommendation and suggest that you at least report to the House on the seven months' work which has just been completed.

The Chair: Is there a motion that you would like to put forward?

Mr Clement: I would move that we report to the House the motion, as amended, as carried by this committee, and that subsequently the subcommittee work with your office to present a report to this committee and then, subsequent to this committee's finalization of that report, to the House.

The Chair: Could you put that in writing so we have that motion.

Mr Clement: I warn you about my handwriting in advance, Mr Chair, but I'd be happy to do so.

The Chair: The motion is to report this motion, as amended, to the subcommittee and work with the office of the Chair.

Mr Clement: It's just a procedural motion. I'm not sure whether you need it in writing. It's not a substantive motion, but the procedural motion would read that I would move that you report to the House on the passage of the motion, as amended, and that subsequent to that the subcommittee would work with your office to finalize a report which would go to this committee and, upon its adoption or amendment by this committee, would then be reported to the House.

The Chair: Any debate on that?

Mr Tony Silipo (Dovercourt): First of all, I just want to understand. I think I understand what the motion is doing, but my understanding is that what we would be doing is not filing a report with the House but instead putting forward the motion that we've been debating.

The Chair: The question on the motion has already been put and it has been carried.

Mr Silipo: I'm sorry, what has been carried?

The Chair: The motion that we've been debating, Mr Clement's motion, as amended.

Mr Silipo: When did you do that?

The Chair: Closure had been moved and it was carried.

Mr Silipo: When did that happen?

The Chair: That happened once the meeting commenced. There was a motion put forth by Margaret Marland.

Mr Silipo: Can I just ask, because I came in at 3:30 — I was told the meeting didn't start until 3:30 — how is it possible that the committee did that?

The Chair: We were working with the clock that we are dealing with in here. It was 3:30 when we started the meeting; actually 3:32.

Mr Silipo: All right. If you could then just bear with me for a second and bring me up to date as to what in fact the committee has done, the committee has passed the motion, or is that what we're voting on now?

The Chair: I'm sorry, closure was passed and the motion, as amended, passed as well. Right now the motion on the floor is to report the motion, as amended, to the House and to work with the office of the Chair.

Mr Clement: The subcommittee would work with your office, sir, to complete the final report, which would then of course go before this committee, and ultimately to the House.

Mr Silipo: The reporting of the motion as passed by the committee to the House does not prevent the writing of the report then. Am I clear in understanding that?

Mr Clement: That is the intent of the mover.

Mr Silipo: There will still be a report?

Mr Clement: Absolutely. I just felt strongly that since seven months' work has been wrapped up today we

should at least, in some form, report to the House and then subsequently, obviously, report with a fuller report. I believe I've moved that motion. It's on the floor.

Mr Silipo: Chair, I'm really just trying to understand. If the motion that's in front of us now is adopted, we would be reporting to the House the motion that the committee has passed and we would still then subsequently be working on a report that would go to the House, fleshing out the motion?

Mr Clement: That's correct, sir.

Mr Silipo: I would like to speak to that whenever —

The Chair: You can speak to it now if you want.

Mr Silipo: I have to say I feel a little bit torn about this, because I understand what the government members have done in bringing closure to this motion. I didn't realize actually you could bring closure to a motion in committee, but I guess if it's been done it means it's possible for it to be done.

I understand the actions the government members have taken, given what the representatives of the Liberal caucus have been doing on this issue. Even though I haven't agreed with the approach that the Liberal Party members have taken on this in filibustering on this issue, simply because I've never understood why they would want to filibuster on this one, but that's their prerogative, I have to say that I find it a little bit troubling that this would have been done in this way with no members from the opposition present, although I appreciate the fact that if it was 3:30 by the clock in this room and you called the committee to order, then a majority of the members can proceed with the business of the committee.

I just want to be clear on the record, Chair, that I came in on the clock that we were using in the Legislative Assembly and purposely came to be here at 3:30 when the committee meeting started. I was here earlier in fact and was told by the clerk that we weren't starting until 3:30, but that's happened.

I would just say that I regret that we have not been able to deal with this issue in the way that I feel it was appropriate to deal with it, which is to do what we were charged to do at the beginning, which was to write a report to the House indicating the views of the committee — majority view, if that's what would have happened, and that's clearly what would have happened in this case — and then to allow within that report, as is the normal course of events, for the opinions of the minority to be expressed.

I won't belabour this, Chair. I and my colleague Mr Wildman, as the two members from the NDP caucus on this committee, have put on the record on more than one occasion our positions, which are not just our own individual positions but those of our caucus because of the various discussions that we've had with our colleagues on this. We believe there is room for referenda to be used in a limited way, in a wise way, and we would like to see that happen.

We don't particularly feel that legislation is required in order for that to happen because we do understand that it's possible for the government, any government, to institute referenda without recourse to legislation. But if the government feels that they want to have in place legislation, then we certainly are prepared to support that,

particularly because there is an area in here that I guess could only be really enacted through legislation, and we support that, which is the issue of citizen-initiated referenda.

I think I've indicated in the past our support for that general notion, particularly when the move was made to say that that initiative could not be started without the signatures of more than 10% of the citizens of Ontario. That is a sufficient threshold that we are comfortable with.

There are still a number of issues — which is why I was asking questions earlier about the process that we would follow — that we believe need to be addressed. We regret that the government members turned down a proposal we had made to also ensure that within the ambit of referenda that would apply province-wide there was also provision to deal with referenda as they might apply to regions of the province. We've used the megacity here in Metropolitan Toronto as a classic example of that and still don't understand the opposite views the government members have taken in saying that they are in favour in referenda overall but they're not in favour of that particular kind of referenda.

It's like the kind of difficulty I have in understanding the Liberal caucus position of saying that they wanted to see that referendum take place and the government held to its results but yet are continuing to block the enabling of referenda across the province. I find myself really in a kind of perplexing situation of looking at contradictory positions that have been taken by the two other caucuses that are sitting around this table, but that's part of the process, I guess.

We have also made it clear that there are some other concerns that we have with respect to the issue of how we protect minority rights from being done away with through referenda. I know that we were dealing in effect with that issue, or that was one of the issues that we were going to go back to, as I understand it, when we last left this discussion, because that's set out in point number 7 of Mr Clement's motion.

While that clearly says that the commission that would be looking at referenda would not allow referendum questions to proceed if the issue that's being asked is in violation of the Charter of Rights or the Ontario Human Rights Code, we were also looking to ensure that there was in the legislation when it came back, and certainly in the report going to the Legislative Assembly therefore, a clear enunciation of the fact that we wanted to see a broad definition of minority rights and that those minority rights would be protected from the use of referenda. We think those are the kinds of things that need to be balanced through the ongoing debate that happens here in the Parliament and not dealt with through referenda.

1540

Having said that, there are a number of other more technical points that we'd made some suggestions on in the course of the earlier discussions which I hope will not be forgotten through this motion proceeding. I gather that in one of the discussions the point that we had made earlier, which was that we would be looking at this question of who would oversee the implementation of referenda, was accepted by the government members. We

would be using this notion that's set out here, an independent referenda commission headed perhaps by justices of the Supreme Court, to deal with the issues of sorting out the question. But in terms of the technicalities of running the actual referenda, we would use the existing structure, which is the elections commission, if that's the correct term.

I guess the last point I'd make on this is with respect to the issue that was in item 12 of the motion, which was the question of issues other than referenda that had to do with electoral reform. What I argued at one point and would have wanted to argue again, to see whether we could get agreement around this table, was to say that that's an issue that warrants some further examination. As I understand it, that's the intent of this.

I was going to argue with what was in Mr Clement's motion about the fact that this was simply recommending that the "issues be referred back to the committee." My sense was that if as a committee we felt this was something that should be done, we should just take it on as an issue and engage in some discussions around the kind of changes that we might want to see and then report to the House in a subsequent report on those, understanding that it's the kind of issue that also would require some time for some debate and perhaps us agreeing to call in some people to provide some advice and expertise on those. I'm not sure what happens to that issue in the way in which we're proceeding.

My last concern about the way in which we are proceeding is that I hope these issues will not disappear in the attempt that's being made by the government members to get around a filibuster by the Liberal members in the committee. I think this is an issue that needs to be pursued. It's fair to say that my own thinking has evolved over the course of the discussions on this.

I'm prepared to continue to be constructive in my role — and the role those of us from the NDP caucus play — in arriving at some solutions and eventually at some legislation that will set out some parameters under which referenda could be set out and could be used, as well as then looking at the question of what other changes we need to make to both the electoral process as well as the whole functioning of the Parliament of Ontario to ensure that the whole process is much more democratic than what we have in place today.

Mrs Sandra Pupatello (Windsor-Sandwich): To the motion —

The Chair: Yes. There are other speakers.

Mrs Marland: Mr Chair, could you tell us who you have on the list for speakers? Am I the first one?

The Chair: Yes.

Mrs Marland: Okay. I'm going to pass. Do you have Mr Clement on?

The Chair: He's after yourself.

Mrs Marland: Okay. May I change places with Mr Clement?

The Chair: If he agrees to it.

Mr Clement: Sure.

Mrs Marland: Thank you.

Mr Clement: I just want to speak to a couple of the items that Mr Silipo has raised and put some assurances on the record. First of all, as I understand it, as I'm sure

is the case, the motion which was passed by this committee was the original motion as amended by the committee. I can assure Mr Silipo that indeed some of the concerns that he has raised are encompassed in the motion as amended, which did pass. That is the case.

He had a number of suggestions which he has been advocating on behalf of his party over the past few months on this particular motion. I believe there will be ample opportunity as the subcommittee works with the office of the Chair to ensure that either — if Mr Silipo is comfortable with the wording as proposed in the final report, that is one thing. If he is uncomfortable with it, there will be opportunities for him, on behalf of his party, to put additional wording in to represent his position in the final report. That is to say, the way I envisage this process, as was explained by your predecessor, Mr Chair, there will be an opportunity for both majority and minority opinions in this report.

All of that is reportable to the Legislative Assembly, so there's no attempt here to hide from Mr Silipo or his party's positions. There's no attempt here to shut down his party's positions. They can be incorporated as part of the final report, either by virtue of your office reviewing Hansard as to what the discussion is or in the subsequent discussion by subcommittee. Of course, this committee would have an opportunity then to review the fruits of our labours back here at committee before that final report did go to the Legislative Assembly.

With respect to his question about calling in experts, we did have a whole host of experts who have already deposed to this committee. I'm quite comfortable we've got a body of knowledge — as well as opinion, but certainly knowledge — on this issue that is before this committee as a result of our public hearings, which will be of great use to your office, Mr Chair, and to the subcommittee in dealing with a final report proposal, which would then of course go to this committee.

Mr Silipo: I was only on number 12, not on the referenda.

Mr Clement: I'm sorry?

Mr Silipo: I wasn't talking about referenda.

Mr Clement: Oh, you're talking about item 12. I apologize. Mr Silipo has corrected me. He was talking about item 12, which does, in my opinion, require further expert input rather than just the opinion of committee members, so I agree with him heartily on that.

There doesn't seem to be any divergence of opinion, if I could be so bold, between what Mr Silipo is suggesting and what I, on behalf of the government side, am suggesting with respect to this motion. It is simply a way to recognize what I think you probably do anyway, Mr Chair, which is to report some substantive work by this committee to the House. I think it's your prerogative to do so, regardless of whether we pass a motion or not, but I simply wanted to offer my support through a motion that you could report this matter to the House and that we could get on to phase 2 of this motion, which is to flesh it out into a final report.

The Chair: The motion, as I understand it, which is on the floor — and I'll just read it — is that the committee make an interim report to the House that the committee has passed Mr Clement's motion as amended and that the

subcommittee work with the Chair to finalize the final report of the committee.

Mrs Marland: Mr Chair, since the matter of the time of the committee hearing has been raised, I would like to place on the record that I came in the committee room at five after 3 this afternoon and didn't leave. The standing orders provision for the commencement of committee meetings are that they will commence after routine proceedings or at 3:30, whichever is the later. This meeting commenced with a quorum at that time and I moved that the motion on the floor be put. I would move that motion again with this motion; I'm moving that the question be put.

The Chair: This is essentially a procedural motion; it's not a substantive motion. I would put the question and I would say it's in order.

Mrs Papatello: Chair, speaking to the motion, please —

The Chair: You can't speak to a closure motion. There's no debate.

Mr John Gerretsen (Kingston and The Islands): Are you not going to allow anybody from the official opposition to say anything on the motion itself that was moved when none of us were here at the time?

Mr Baird: You were late, John.

Mrs Marland: Actually, Mr Silipo was here. The motion that's on the floor, Mr Silipo was here when it was moved.

Mr Gerretsen: I'm talking about the official opposition.

Mrs Marland: Well, if they're late, they're late.

Mr Gerretsen: Oh, I see. Okay.

1550

Mr Rick Bartolucci (Sudbury): Mr Chair.

The Chair: Point of order?

Mr Bartolucci: Yes, a point of clarification, Mr Chair: What does past practice indicate? What is the procedure? As Mrs Marland indicated, she moved the motion before the members of the other two parties were here. What's the past practice on that? When I used to sit in this committee, that never was the case. We wouldn't vote until we had representation.

The Chair: The rules are fairly clear in terms of when the meeting starts, when there is quorum; there was. A motion in terms of closure is under the rules and we are following the rules.

Mr Bartolucci: Could I then ask the clerk what is the past practice with regard to a vote at committee?

Clerk of the Committee (Mr Peter Sibenik): In many situations the case will be that the committee proceeds when there is at least one representative from each of the parties present. However, there's no hard and fast rule that it is required to proceed in that particular matter. As the Chair has indicated, the committee can proceed when there is quorum. In the absence of quorum, a committee can still meet. If there is not sufficient quorum, a committee can proceed. However, the lack of quorum can be drawn to the attention of the committee.

Mr Bartolucci: Then I would suggest, Mr Chair, that what has happened here today is that the government members have decided that past practice is no longer of any use in setting criteria for committee meetings and —

Mrs Marland: I'd like to make a point of order.

The Chair: Yes?

Mrs Marland: First of all, is a point of order —

Mr Bartolucci: I'm asking for a point of clarification.

Mrs Marland: I'm asking, on a point of order, is a point of order accepted when a motion to call the question has been placed? That is what I need to know first of all.

Mr Gerretsen: You're doing so right now by raising that point.

Mrs Marland: I'm asking if a point of order is in order, if you're listening.

The Chair: With respect, we have a closure motion here and points of order are in order. I understood Mr Bartolucci was making a point of order. Now, if he's making a point of clarification, that's a different matter.

Mr Gerretsen: I'd like to make a point of order.

Mrs Marland: Then I would like the second point of order and my point of order is this: The clerk has said what has sometimes been the practice in committees. Whether we like it or not, I suppose I am the person in the room who has sat on committees the longest. I have arrived late at committees when only government members have been present, there has been a quorum present and a motion has been passed and there was nothing I could do about it. Unfortunately, that's the position the Liberals find themselves in at this point.

Mr Gerretsen: On a point of order, Mr Chairman: What you're saying may very well be so, but you were going to be a government that was going to be different.

Mr David Tilson (Dufferin-Peel): That's not a point of order.

Mr Gerretsen: I have been involved in the public process for 30 years and I can —

Mr Clement: Spare me.

Mr Baird: On a point of order, Mr Chair: He has not been recognized by the Chair yet. They're debating. This is not —

Mr Gerretsen: Can I state my point of order or not?

Mr Baird: State it.

The Chair: I'd like to hear it, so state your point of order. I'm listening.

Mr Gerretsen: My point of order deals with the procedure as to what's happened here. They are covered in the standing orders. It's certainly something that I should be allowed to address, because if you're saying that we're not allowed to do that after a government has in effect moved closure on a debate without someone from the official opposition being here — I do not have the kind of experience that Mrs Marland has had, I have only been here for two years, but I know there have been many, many occasions when committees have had the courtesy — and it may only be a courtesy or it may be tradition —

Mrs Marland: Like Peter Kormos shutting a committee down because there wasn't quorum.

The Chair: I want to just make a comment here before we get too deep in this. I have indicated to you what I did with respect to the closure motion. I have been in committees where if there isn't quorum we don't have a committee. There was quorum at the time and we started the meeting because that's when we're supposed to start

the meeting. A motion came from the floor and I took that motion. I am obligated to do that. There's nothing in the rules —

Mr Gerretsen: Could I finish my point of order, Mr Chair, or not?

The Chair: Mr Gerretsen, I am explaining to you what occurred.

Mr Gerretsen: You don't even know what my point is at this stage. If you would at least allow me to finish stating what I was going to, then you can have whatever opinion or make whatever ruling —

The Chair: Mr Gerretsen, what we're dealing with here is not the closure motion that has already been passed. We want to understand that. There's a motion that was put on the floor. I've read it. There now is a closure motion. We're dealing with points of order on that and that's what I would like to hear, your point of order to this particular matter.

Mr Gerretsen: That's exactly what I want to address if you give me the opportunity to address it.

The Chair: Go ahead.

Mr Gerretsen: Number one: The original motion was made when the official opposition was not present. Number two: What would happen now is that you've got a number of speakers on your list —

The Chair: We're not dealing with that.

Mr Gerretsen: Would you let me finish? At least listen to my —

The Chair: I asked you to deal with the motion that's on the floor.

Mr Gerretsen: That's exactly what I'm dealing with.

The Chair: Everybody's present here now.

Mr Gerretsen: I am dealing with the fact that you have allowed a member to in effect have that motion called at a time when you still had people who wanted to speak to that motion, because I noted that at least Mrs Papatello and I both wanted to speak to that motion. You have allowed a closure motion to be introduced at a time when the official opposition wasn't here, and now the members of the government have gone one step further and are saying, "We don't care whether or not you people want to address that motion."

We're now going to call for a vote after allowing — very nicely, Mrs Marland has yielded to Mr Clement so he could get his points in and now she has taken the floor back, which is highly unusual in itself. The tradition has always been in the two years I've been here is that you get a speaker from one caucus, then another caucus and you go in rotation. Two people were allowed to speak on that side at the same time.

Mr Tilson: Mr Chair, this is debate. This isn't a debatable motion. He's calling it a point of order, but it's a debate.

Mr Gerretsen: The point of order is simply this: You have allowed two people from the same caucus to address this issue, with the second one moving closure at that point in time, which is highly unusual.

The Chair: Mr Gerretsen, I cannot stop someone from introducing a motion.

Mr Gerretsen: But you could have stopped the second person from that caucus addressing this committee without going in rotation.

The Chair: I haven't ruled on that motion, Mr Gerretsen. Mrs Marland had the floor. She put a question before the committee. We're obviously having debate on this, whether we intended it or not.

Mr Gerretsen: Mr Chair, why did you allow two people from the same caucus to address this issue in succession without going to the other caucuses first in rotation?

The Chair: Because they're in order.

Mr Clement: On a point of order, Mr Chair: I support you on the ruling. If the honourable member has a problem with the ruling, he can challenge the Chair. If he feels strongly about it, I encourage him to do so. But I happen to support your ruling and I understand that it's not a debatable motion to move that the question be put and I suggest we move on with things.

Mrs Marland: You don't go in rotation. You go by the list. That's why I asked him to say what the list was so you wouldn't accuse us.

The Chair: Are there any other further points of order on the closure motion?

Mrs Papatello: I have a point of order, Mr Chair: May you clarify whether I will be able to speak before the vote?

The Chair: You're speaking now. You have the floor on a point of order.

Mrs Papatello: I'd like to speak to the motion, please.

The Chair: No, you can't. Speak to the point of order.

Mrs Papatello: I was on the list to speak right after Mrs Marland and unfortunately, because she closed the debate, I am assuming that you are then making the decision that I won't be allowed to speak. So as a point of order, I guess I need to find out when exactly I'll be able to make my —

The Chair: I'm listening to your point of order on this motion.

Mrs Papatello: I am saying it at the moment. Maybe you could clarify for me when I'll be able to speak to this motion before the vote.

The Chair: You can speak on the point of order right now. You're asking me to make a decision without you making your point of order.

Mrs Papatello: My point of order is that I would expect that the Chair would clarify when this member can speak to the motion before it's put to a vote.

Mrs Marland: Calling the question, Sandra, you should know by now, cuts off the debate.

The Chair: With respect to the order of speaking, we're dealing with a motion. People come on and I look. They want to be on the list, I put them on the list. We're going in the order of what the list is. Mr Clement spoke and Mrs Marland has put a motion on the floor and I'm dealing with the orderliness of the closure motion right now. Are there any other points of order?

Mrs Papatello: Chair, could you just inform this member when I'll be able to speak to this before it goes to a vote?

Mr Gerretsen: You won't be able to.

Mrs Papatello: I need the answer. You haven't told me yet, Chair.

The Chair: It doesn't deal with the point of order I'm dealing with now. It's not in order.

Mrs Pupatello: What point of order are you dealing with, Chair?

The Chair: Orderliness of this closure motion, that's what I'm dealing with.

Mrs Pupatello: Okay. Could you please just, as a point of privilege, inform this member when I'll be able to speak to this motion before you call for the vote?

The Chair: It's not a point of privilege. It's not in order.

Mrs Pupatello: What isn't in order, Chair?

The Chair: A point of privilege has nothing to do with what you are asking me to do here.

Mrs Pupatello: You and I crossed each other on the stairs at about 3 o'clock this afternoon. My books were already in the room.

The Chair: That has nothing to do with what we're dealing with here, Mrs Pupatello.

Mrs Pupatello: The fact is that this was purposely done, even though I left the chamber at exactly two minutes to 3:30 in order to get here, and it doesn't take me that long to go down the stairs, so this was perpetrated specifically to change the order —

Mr Baird: Point of order, Mr Chair.

The Chair: Okay, Mr Baird, you have the floor.

Mr Baird: The member for Windsor-Sandwich is impugning the motives of this; she said it was purposely done. She is engaged in a five-month filibuster. The meeting was called at 3:30 and the Liberal members weren't here; they were late. She didn't do her job properly. She was late. She was late. She did not do her job —

The Chair: I am going to call a five-minute recess.

The committee recessed from 1602 to 1609.

The Chair: I resume the session here. Is everybody here?

Mr Gerretsen: Chair, I would like to call for a 20-minute recess. I believe that's in the standing orders that the opposition can call for a recess 20 minutes before a vote.

The Chair: That's premature, Mr Gerretsen. We don't have a vote before us. I'm going to rule that the motion is in order. Shall the question now be put? If you want to ask for your recess, you can ask for it now.

Mr Gerretsen: I would like to ask for a 20-minute recess.

The Chair: Granted.

Mrs Marland: To call in the members. The motion is that he's asking for a 20-minute recess to call in the members, just so that we understand.

The Chair: Is that right, Mr Gerretsen? Is that your motion?

Mr Gerretsen: Yes, I'd like to call for a recess for 20 minutes, as provided for in the standing orders.

The Chair: It's a request for a recess to call in the members and it's 20 minutes.

Mr Gerretsen: So that the members can be here, yes.

The Chair: Yes, okay. It's granted.

Mr Baird: What time, Mr Chair?

The Chair: We would return at twenty-five to 5.

The committee recessed from 1611 to 1632.

The Chair: The meeting is now in session. Shall the question now be put? All in favour?

Mrs Marland: Of the question being put?

The Chair: Yes. All those against?

Mrs Marland: Could we have a recorded vote on the question?

The Chair: It's carried.

The motion of Mr Clement: All those in favour?

Mr Gerretsen: On a point of order.

The Chair: There's no point of order.

Mr Gerretsen: No point of order?

The Chair: We're in a vote.

Mrs Marland: Recorded vote.

The Chair: Recorded vote. On the motion, all in favour?

Mr Silipo: Could you read the motion?

The Chair: I'll read the motion: That the committee make an interim report to the House that the committee has passed Mr Clement's motion, as amended, and that the subcommittee work with the Chair to finalize the final report of the committee. That is the motion.

Ayes

Baird, Boushy, Fox, Marland, McLean, Silipo, Tilson.

Nays

Bartolucci, Gerretsen, Pupatello.

The Chair: The motion is carried.

Now we still have some matters to deal with on the agenda. I'm in the committee's hands as to how they would like to deal with that. I'm looking to call a subcommittee meeting for next week some time, and we'll contact you on that, to deal with the motion that has just been passed. I'm in the committee's hands in terms of how they want to deal with the rest of the day.

Mrs Pupatello: Chair.

The Chair: Yes.

Mrs Marland: I don't have an agenda, but if there's no further business —

Mr Gerretsen: Just a minute now. You recognized Mrs Pupatello first and now you're going to Mrs Marland.

The Chair: We're not going to her. We're just passing out the agenda. Nobody has copies of it.

Mr Gerretsen: She has the floor. You've got to show a bit of impartiality, Mr Chair. That's how it normally works.

Mrs Pupatello: Chair.

The Chair: Yes. We're going to have copies. As soon as you get a copy.

Mr Gerretsen: He won't recognize you anyway.

The Chair: Yes, Ms Pupatello.

Mrs Pupatello: Thank you. I did want to have it recorded that I'm obviously very disappointed in the committee and their behaviour today. In fact, they've gone forward without any of the other parties involved in the vote.

The Chair: Mrs Pupatello, absolutely not. We're trying to deal with agenda items and I'm going to have to stop you —

Mrs Pupatello: I'm getting on to the agenda right now actually. Because of the way things have been handled, that unfortunately we've forwarded things to that subcom-

mittee, that whole report, without ever getting any of the answers to any of the questions that were put forward in all of those discussions we have had, I think it needs to be recorded, my own disappointment in not having any of the answers afforded by this committee to us as opposition members. They have gone through holus-bolus without even the attempt —

The Chair: Mrs Papatello, I'm going to have to be somewhat firm here. I'd like to deal with other agenda items. The motion has been read. It's very clear that we're going to be dealing with the report. The subcommittee will deal with that.

Mrs Papatello: What point are you on?

The Chair: Who's on the subcommittee?

Clerk of the Committee: Mr Morin.

The Chair: Mr Morin is on the subcommittee for the opposition party, Mr Silipo is on for the NDP, Mr Clement for the government party and myself. We're going to prepare the report in terms of the motion.

Mrs Papatello: I'm on your agenda, actually. I'm not talking to the motion that's already been passed.

The Chair: If everyone has a copy of the agenda, we do have some ongoing business. I'm in the committee's hands if there's something that the committee would like to deal with. What part of the agenda would you like to deal with?

Mrs Papatello: Number 1, ongoing business: I'd like it recorded that so far and to date, since the members of the committee have been changed, there hasn't been any attempt on the government side to bring forward information that was necessary in previous matters that have come to committee. We can only hope that as we go forward on to all matters pursuant to permanent terms of reference, standing order 106(i), including administration of the House, members' services and facilities, broadcast and recording service, we would see far more cooperation from government members in attempting to actually

inform and bring real information to the table in any future discussions that occur, in particular when we come back to the issue of referenda. Unfortunately, opposition members and certainly the general public of Ontario are still very much in the dark about where the government is really heading.

The Chair: Mrs Papatello, it's just a simple matter. We can deal with the matter. If you want to make a speech, I don't think it's necessary with respect to just an agenda item. If you want to deal with number 1, we can deal with it today, if the other members want to deal with it.

Mr Silipo has asked to deal with an agenda item. Are you interested in dealing with anything from the —

Mr Silipo: I was just going to make the suggestion that, in terms of dealing with these other items, that's something we should have the subcommittee take a look at rather than us proceeding today. I think that would be a more useful way to proceed than for us to start to get into a discussion of any of these items at this point in time.

The Chair: Is that agreeable with the committee?

Mrs Marland: Yes, it is.

The Chair: Okay. If that's the case then, I would move the meeting is adjourned. Is there a motion for that? Mr Baird.

All those in favour of adjourning the meeting?

Mrs Papatello: Recorded vote, please.

Ayes

Baird, Boushy, Fox, Marland, McLean, Silipo, Tilson.

Nays

Bartolucci, Gerretsen, Papatello.

The Chair: The motion to adjourn is carried.
The committee adjourned at 1639.

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Prince Edward-Lennox-Hastings-Sud PC)

Mr John R. Baird (Nepean PC)

Mr Tony Clement (Brampton South / -Sud PC)

Mr Alvin Curling (Scarborough North / -Nord L)

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Mr Ernie Hardeman (Oxford PC)

Mr Ron Johnson (Brantford PC)

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Mrs Sandra Pupatello (Windsor-Sandwich L)

Mr Tony Silipo (Dovercourt ND)

Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)

Mr David Tilson (Dufferin-Peel PC)

Mr Bud Wildman (Algoma ND)

Substitutions present / Membres remplaçants présents:

Mr Rick Bartolucci (Sudbury L)

Mr Dave Boushy (Sarnia PC)

Mr John Gerretsen (Kingston and The Islands / Kingston et Les Îles L)

Clerk / Greffier: Mr Peter Sibenik

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



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Assemblée législative de l'Ontario

Première session, 36^e législature

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 25 June 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 25 juin 1997

The committee met at 1646 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Joseph Tascona): I would like to convene the meeting of the standing committee on the Legislative Assembly. The first item is the subcommittee report. I'd just like to read that for the committee.

"Your subcommittee met on Wednesday, June 18, 1997, to discuss the future business of the committee and it has agreed to recommend:

"1. That the following matters be considered at the June 25, 1997, meeting of the committee:

"(a) the use of the legislative coat of arms on members' rings;

"(b) the semi-annual review of the Clerk of the House on changes in the administration of the House and on the provision of services to members, the semi-annual review of the Sergeant at Arms on security at the Legislature, and the annual review of the televising of the legislative proceedings; and

"(c) the annual meeting of the National Conference of State Legislatures (Philadelphia, August 6 to 9, 1997).

"2. That, if it is scheduled to meet on August 20, 1997, the committee proceed with consideration of Bill 132, An Act to adopt an official tartan for Ontario, on that day; that Lillian Ross, MPP, be notified of this meeting; and that notice of this meeting be broadcast on the parliamentary cable television service.

"3. That the consideration of other items of business be deferred until the meeting after the June 25, 1997, meeting of the committee."

Do I have a motion to adopt the report of the subcommittee?

Mrs Margaret Marland (Mississauga South): So moved.

The Chair: All those in favour say "aye."

All those against say "nay."

The ayes have it.

USE OF LEGISLATIVE ASSEMBLY
COAT OF ARMS

The Chair: The next matter of business we have is the use of the legislative coat of arms on members' rings. There is background material on this, and the presenter is Jerry J. Ouellette, MPP.

Mr Jerry J. Ouellette (Oshawa): Essentially what has taken place, so people understand, is that members were approached by a private company that had asked if members of the Legislature were interested in purchasing, on their own, rings that signified, in the same manner that

the pins do, that they were members of the Legislature, and as such, a presentation was made. All caucuses were actually invited to it. I spoke to members from each of the caucuses and invited them.

This individual was proceeding on, and then it was determined that the Legislative Assembly actually owns the coat of arms and all rights that are involved with that. What we're here to discuss today, I believe, is that the coat of arms be allowed to be used and for members to purchase their own rings. That's what we're open for discussion on, if there is any discussion or concerns about how the process is to take place.

Mr Steve Gilchrist (Scarborough East): Mr Ouellette, it's my understanding that at least one company has already made some kind of presentation to either this committee or to the staff in the building responsible for ordering this sort of paraphernalia.

My only comment would be that as long as what we're doing is promoting a competitive process that would derive the best price for the best quality, I would certainly support the use of this. I think members have indicated in the past that they would like the option of having a ring fashioned with the coat of arms. I think that would be quite appropriate and just as fitting as the lapel pins we currently wear. So as long as it's a process that is well communicated to the industry and derives the best product for the best price, I would totally support a move in this direction.

The Chair: What are you saying? You're moving in what direction?

Mr Gilchrist: In the direction of an RFP process or some kind of investigation of the alternatives. I'm sure there aren't that many companies involved in this field, and certainly I think one would want a fairly high-quality product as befits the institution. Again, recognizing that the members will be paying for this themselves, they would undoubtedly want something that's going to be durable. At the medium to high end of the business, I would be very surprised if among those who make, for example, Stanley Cup rings or Grey Cup rings — I imagine we'd be looking at a comparable product — there can't be that many companies. I'm sure we'd have a database available through the Ministry of Economic Development, Trade and Tourism, if we don't already have that information at hand, or the yellow pages.

I would suggest that the appropriate steps be taken to ascertain the names and inform them of our interest in pursuing this, and that at such time as they prepare pricing information and show you the samples, information be sent out to the members and afford them the opportunity then to purchase a ring if they so desire.

Mr Tony Silipo (Dovercourt): Chair, I really just wanted to pick up on what Mr Gilchrist was saying and pursue that through some questions, both to you and/or to Mr Ouellette or the clerk, because I'm not sure who is in the best position to answer these questions.

I certainly am fine with the concept of members being able to use the coat of arms on a ring. I have no problem whatsoever. I personally am not interested in having that done, but if members are, I certainly don't want to stand in the way of that happening.

I do have some concerns around what process we would follow to do that. I understand how this issue came before us. Again, I think it's fine if individual members have taken this on. Or if a particular jeweller has approached some members and said, "Here's something I could do," that's also fine. But I think we have a responsibility to make sure that there is an appropriate process put in place, rather than setting up a situation where we simply decide that jeweller A or jeweller B is going to be engaged to do this.

I'm looking for some help in just being clear about what it is we need to do as a committee. My understanding from the discussion we had at the subcommittee was that, first of all, we require agreement by this committee and presumably ultimately the Legislature to actually do this, because we're talking about releasing the use of the coat of arms. Maybe we need to be clear that that's the first thing we need to do, and second would be the process we would follow.

I'd seek some guidance in terms of what the rules of the Legislative Assembly are. I presume we have some rules that we have to follow with respect to tendering, with respect to putting out a proposal allowing anybody to bid who wants to bid. Or is it a situation where we would be basically saying, "Yes, we approve this happening," and then leave it up to each individual member to go and sort it out with individual jewellers? I'm not saying one is better than the other. I'm more comfortable, it's fair to say, with the tendering process.

I want to be clear about what we're being asked to do here. With all the discussions that have happened, I am still not entirely clear except for the first point, which I believe is that we need to give approval for this to happen. I'm prepared to give that approval but I want to do it on an understanding of what happens next.

I'm not sure it's in the interests of the Legislative Assembly to simply have the coat of arms out there to be used in any which way. We would hopefully all agree that there need to be some pretty clear protections. I don't know if the process that was followed when the pins were put together helps us in this case, because I don't know what the process was at the time. Maybe that's something we can get some information on.

The Chair: The clerk is looking into that at this moment. If we can get an answer before the meeting is over, we'll endeavour to do that. Any other comments?

Mr Silipo: I would feel more comfortable, then, if what we are doing today is agreeing to Mr Ouellette's request that we give permission for the coat of arms to be used on rings, but I would want that to be done subject to whatever the rest of the process is. I would feel more comfortable knowing what would happen next and not

just simply passing a motion that would say, "Yes, go ahead and do this," without knowing what "this" is.

Mrs Marland: I was on the Legislative Assembly committee — and I think you were, Alvin; or you were here but I don't know if you were on the committee — when we first decided that the members of the Legislature in Ontario should wear an identifying pin, the same as other legislatures in Canada. Most of us are only familiar with the members' pin that the federal House of Commons members wear. As you see, there are a few similarities between the one we wear and the federal one, which also has a mace on top of the coat of arms.

I can't even remember the year we did work on developing the design for the pin members have today. I'm sure that in the records of Hansard of this committee we can very quickly research how that was done. I remember that a subcommittee of three of us had the responsibility for finalizing the design of the current members' pin, always having in mind that the cost of that pin would be borne by the members themselves, although the original idea was that we could wear it instead of always wearing a plastic dog tag around our neck for everything. That's okay, except in our job we're so often in settings where people are looking around and wondering who the member is and you don't want those plastic dog tags around your neck in photographs and all that kind of stuff.

That's how the members' pin originally came about. I think it would be interesting to research what year it was. I'm quite sure we did put it out in some form of tender, although it's not in the price range of a requirement for tender. I certainly would feel comfortable if we got two or three bids on doing rings.

It's interesting because we have at least four members in the chamber who have had, again at their own expense — and what we're talking about here, I want to emphasize, as Mr Ouellette says, is "at our own expense." It's just the permission to use the coat of arms. We have three or four members in the chamber today who have had the current members' pin incorporated into a ring. I think for some men particularly — because it's very big for a woman's ring — they just prefer the ring to a lapel pin that they have to keep remembering to change from suit to suit.

I support the concept but I agree with Tony that we should make sure we do it properly. Then we won't get into any difficulty. We didn't get into any difficulty once we got the members' pins finalized. I don't think it's a big deal. I think as long as we know that the prices have been — I would suggest that we have three top companies. What I find interesting is that the new members' pins — and I guess I have to be careful how I say this — are not the same as the original members' pins. They are similar but they are not the same. Some people prefer the original pins because the new members' pins are quite a bit flatter in the ring and the detailing. If we, as a committee, decide to go ahead, then what we should do is get the information back from three of the companies.

We have that coat of arms on lots of things. I'm thinking of cufflinks, for example, that the public can buy out here at the gift shop. They are a \$90 item, I think, in sterling silver, but anyone can buy them. You don't have

to be a member. So we don't really keep a very tight control. We like to think we keep a tight control.

The other question is, of course, that we now have two coats of arms. Tony, you will recall that Speaker Warner introduced, in his tenure as Speaker, the members' coat of arms. I don't know whether we're talking about the members' coat of arms on these rings. We don't actually have the members' coat of arms on our members' pins; we have the Ontario coat of arms on our members' pins. I don't have mine on today. So that's something we have to consider as well, which coat of arms.

The use of the members' coat of arms is controlled very strictly. When we adopted it, it was controlled very strictly. Only members could use it on letterhead and so forth. Government ministries can't use the members' coat of arms. It's not a government coat of arms, it's not a provincial coat of arms; it's a members of the Ontario Legislature's coat of arms. Do you know what I mean, Allan?

1700

The Chair: Just to assist the committee at this time, the role of the committee here today is essentially to decide whether to adopt Mr Ouellette's recommendation and report this to the Speaker. We don't have any jurisdiction to deal with the issue of purchase, if that helps the committee in terms of discussing this matter.

Mrs Marland: I didn't understand what you said.

The Chair: What I indicated was, we can decide as a committee to adopt the recommendation of Mr Ouellette with respect to the coat of arms and the ring, and report what we have recommended to the Speaker, but we don't have jurisdiction to deal with the issue of purchasing the actual rings and tendering it out etc.

Mrs Marland: So we could give direction to the Speaker that we would like them tendered.

The Chair: That we support the concept that Mr Ouellette is putting forth, and then they'll deal with the financial aspect of it.

Mrs Marland: Okay.

Mr Allan K. McLean (Simcoe East): So all we need is a motion to approve it and the Speaker will deal with it?

The Chair: That's correct.

Mr Alvin Curling (Scarborough North): Mrs Marland made some very good points there, and I agree. First, I notice that it says "the use of the legislative coat of arms on members' rings." Since we have two different coats of arms, are we speaking about the members' coat of arms or the Ontario coat of arms? If it's members' rings, I would much rather see the members' coat of arms on members' rings, if that's the case. I'm not quite sure about that. Maybe I'm not up to snuff with all the briefing on this, but that issue should be made plain: Which of the coats of arms are we speaking about? If it is the members' coat of arms, I presume it's only members who should be wearing it.

If an order is given that this committee approves it, will these jewellers be able to make it and sell it to anybody else? If it's the members' coat of arms, can somebody outside buy a ring from them, in the sense that they want to buy a members' coat of arms ring, and wear it, or is the use of it restricted? These are questions.

I like the idea. I'm sure Mr McLean must have spoken on this already. I think he has his pin on.

In regard to what Mrs Marland said about the ring and the pin, I lost my pin twice. I don't have any now. I hate pins. Thank God they used to supply us with all these little pins so I could replace them. I would forget what coat I put it on. Then I realized I had put it on, the back didn't go on properly and it got lost. The only reason I retrieved mine was the fact that my name was written on the back and somebody called from Ottawa and said, "I found it." Thank God they knew me. The next one — it's gone. I think the ring is a much better kind of symbol to wear.

I would just like to clarify whether we're talking about the members' coat of arms or the legislative coat of arms.

The Chair: Mr Ouellette, can you clarify for Mr Curling?

Mr Ouellette: What took place, if you look on the eighth page of the handout that everyone received, you will see there that what I tried to do was the same as the pin, to keep consistency, to have it the same, which is essentially the legislative crest. However, the presenter who came forward who wanted to have the rings left the option available to the individual as to how they wanted the sides of the rings. They could have had "MPP" on one side and the trillium on the other, or the mace, or the members' crest, or initials, or the year. So each member could customize the ring as they saw fit. It was trying to keep it the same as the pins, which is the legislative crest, and should individuals want the members' crest on the side, that option was available as well. But that was from that single presenter. What I would recommend is to allow the process to go forward and then have the Speaker — as stated.

As was stated earlier, they sell cufflinks and things in the gift shop and we have no control over who receives them. Mr Curling, I was trying to keep it the same as the pin, to use the same crest that was on the pin, just for simplicity's sake. Because there were so many members who wanted this or wanted that — they wanted everything — I said, "Let's keep it the same as the pin."

Mr Curling: We're saying then that when we make these pins, they will be available to everyone.

Mr Ouellette: No, they will just be available to members.

Mr Curling: Okay. It will be better if it's consistent. You're saying it's the same as the lapel pin.

Mr Ouellette: It's exactly the same, except that the mace was removed from the top because of —

Mr Curling: It's not the same, then.

Mr Ouellette: On the members' pin the mace was on top of the crest, and the reason that was removed was because the jeweller felt it would dig into the individual's hands. It stuck out considerably past the crest.

Mr Curling: Once you start changing it, it's a different crest altogether. That's the concern. I would have liked to see the consistency. Is this Mr McLean's ring?

Mrs Marland: Yes.

Mr Curling: It could be like this. Therefore, if one wants to wear it on the lapel or one wants to wear the ring, it's consistent. The jewellers, for their own design, when they say it's going to dig in, I understand all that,

but it has changed it. A crest is something you don't change around. I have a concern about that.

Mr Ouellette: As a matter of fact, you'll find that Mr McLean's ring is different from the new pins. His ring is based on the old pin, which is the members' crest. The new pins that were designed are of the legislative crest.

Mrs Marland: Excuse me, I've got the ring in front of me and it is true that this ring of Mr McLean's is the original members' pin.

Mr Ouellette: Correct.

Mrs Marland: And the original members' pin is the Ontario coat of arms.

Mr Ouellette: Right.

Mrs Marland: What you're talking about is the new members' Legislative Assembly coat of arms that was introduced by Speaker Warner.

Mr Ouellette: The way it was listed to me was that one was the members' crest, which is the pin we hand out to everyone, which is the Ontario coat of arms, I believe.

Mrs Marland: No, it isn't.

Mr Ouellette: The legislative crest is the one that has the Latin writing on the bottom of it.

Mrs Marland: The one that's in the package is the Legislative Assembly coat of arms.

Mr Ouellette: Yes.

Mrs Marland: This coat of arms was introduced by Speaker Warner for the use of members only. As I said a little while ago, only members can use this coat of arms on their letterhead and so forth.

Mr Ouellette: Right.

Mrs Marland: So the new members' pins have this coat of arms.

Mr Ouellette: And that's what the ring was to have.

Mrs Marland: Okay. What I'm saying is that the old members' pins, as with this one, are the Ontario coat of arms.

Mr Ouellette: We're in agreement with that.

Mrs Marland: The thing that distinguishes this from letterhead and makes it really the new members' pin is the mace. I think if we are going to go ahead with this for members, we need the mace on top of it. The Canadian parliamentary association, for example, has an identifying pin. It has the mace on it, and it's the mace on the federal members' pins that tells you that's a member of Parliament. I don't think we're really interested in wearing a ring with a coat of arms on it only; I think we want it to be a members' pin, and the mace designates that.

Mr Curling: I just wondered, if they want to sell the ring beyond the members — it's not beyond the members?

Mr Ouellette: No.

Mr Curling: Therefore the mace is extremely important to me and I would like to see the consistency as near as what Mr McLean's ring is. I think you told me you took your stuff and you made the ring. There's a consistency there. To change it now, we may be into a different —

Mr Ouellette: But earlier I was of the understanding that you wanted the consistency, to make sure that the

Legislative Assembly coat of arms remained as such. By adding the mace, it essentially changes that coat of arms.

Mr Curling: No. If I said that, maybe I was wrong in what I wanted to relate.

1710

Mr Ouellette: So you want to have consistency —

Mr Curling: I want the consistency as it is. You had said that the jeweller said the original one may dig into the individual, but if you look at Mr McLean's ring, there's no digging into the flesh. I don't see it. It's rather large.

Mr Ouellette: That's because of the size of the ring. Unfortunately a lot of individuals who have smaller hands, and especially the females who wanted to put orders in, would not be able to wear that size. The problem that came forward earlier on when I was talking with members is that everybody had their own opinion on how they wanted it designed. That's why the jeweller came forward and said, "We can keep consistency with the crest on the top, and you can personalize your ring on the sides," which included the Ontario coat of arms or "MPP" or the trillium or the mace on the side of the ring, and that allowed everybody the individuality to personalize their own ring yet still have consistency on the top with the Legislative coat of arms.

If the committee decides that they want a specific one laid out — I don't have a problem; all I'm doing is bringing forward something that members were asking for — and we find there is some control under this, so be it. Fine.

Mr Curling: Just a quick summary: I am in agreement. If we could have the ring, I would just like to see that consistency. That consistency starts from the first one we had, and then the design of smaller or bigger for female or male accordingly would be up to the jeweller.

Mrs Marland: I'd like to move that the standing committee of the Legislative Assembly approve the proposal by Jerry Ouellette to authorize the use of the Legislative Assembly coat of arms in the design of a members' ring, provided that each member pay any associated costs.

Mr Curling: You missed out one point there, the "members'" coat of arms.

Mrs Marland: I think I did say that.

Mr Curling: You said it afterwards, that it was a members' coat of arms.

Mr John R. Baird (Nepean): She said the legislative coat of arms.

Mrs Marland: Legislative Assembly.

Mr Baird: The Legislature uses the coat of arms, not just the members.

Mr Curling: For the same thing?

Mrs Marland: Yes, including the mace, if you want to add, "including the mace."

The Chair: Does everyone understand the motion?

Mr Curling: Is that the same thing I was saying, Margaret?

Mrs Marland: Yes.

The Chair: There being no further discussion, all those in favour? All those against? I declare the motion passed. Thank you very much, Mr Ouellette.

SEMIANNUAL REVIEW: SERGEANT AT ARMS

The Chair: The next matter on the agenda is the semi-annual review of the Sergeant at Arms on security at the Legislature. We have the Sergeant at Arms.

Mr Dennis Clark (Sergeant at Arms): I just wanted to start off by saying I'm glad to see so much interest in the mace because I want you to know I guard that with my life.

Mr Curling: Someone took the mace away from the House about 15 minutes ago.

Mr Clark: Don't say that.

Just as a matter of interest, I was listening quite attentively on that because we're doing some prototypes for our new security uniforms, our new standalone security service, and this is one of the finalists we're looking at. Again, it's copyrighted in Ottawa so we got the okay on it.

Mr Gilchrist: I take it it's just a matter of respect, and I trust the French wording will not be in larger typeface than the English.

Mr Clark: It will be the same. Actually, Mr Gilchrist, talking to the manufacturer, it will just be "Legislative" on top and "Service" and "Sécurité" on the bottom, otherwise he says it's too busy.

Mr Gilchrist: So you're telling me it's only going to be in French?

Mr Clark: No, no. It will be bilingual.

Mr Gilchrist: You just said "Service" and "Sécurité" is the only thing on the bottom."

Mr Clark: It will say, "Legislative" on top and — oh yes, I'm sorry — "Security" on one side and "Sécurité" on the other side as well. Again, that hasn't been finalized.

I appreciate you all have very busy agendas and I will go through this rather quickly. I certainly appreciate any questions that you have. Just interject as I go along and I'll certainly try to answer your questions. If you want me to slow it down, tell me that too. I appreciate your timetables. At the same time, I appreciate having the opportunity to give you this update.

Just so you have an appreciation of where I'm coming from, in this type of environment — and I am learning very quickly — the Legislative Assembly precinct presents a number of unique security concerns. The security system cannot present a fortresslike image to the building occupants, visitors or the general public. However, the security system must be capable of securing specific sensitive areas of the building and must be capable of being upgraded easily to a higher security level if necessary. In other words, what I'm saying is that we've got to strike a balance, and I very much appreciate that.

I would like to move on now. A year or two ago — and Mrs Marland can help me out on this — there was a committee struck with three of the caucus members on legislative security. They came up with what I feel were 10 excellent recommendations for the new security service. I don't want to go through all 10 recommendations, but I pulled out the ones that I thought were of high priority to give you a good insight as to where we are going with it.

The second recommendation was the restructuring of the legislative security service. The actual recommendation was, "The committee recommends that the legislative security service should be restructured," along with a security chief or Sergeant at Arms, or whatever you want to call it, in charge. That has obviously been done.

Having said that, we're in the process of transition. As you're aware, there's an OPP detachment here; originally six personnel, it's down to about four now. In that transition they will be gradually phased out, as they are now being, and the new system will come in.

The new system is a standalone security system. It falls under the Legislative Assembly and reports to myself. Of course, I report to both the Clerk and the Speaker on various matters. I apologize if that's a little hard to read, but anyway, I can just go through it. We're just about in the middle of the transition. As I said, the OPP are being phased out, and in that, I've come up with a new organizational structure, with the Sergeant at Arms on top here, and then over here are just your legislative attendant and ushers, who obviously report to me. Under here is where we start with a security systems manager and an operations manager, and that's either an executive assistant or what I call an admin support manager.

Those three persons basically are replacing the OPP. For instance, some of you are aware of Mr Al Hough, the staff sergeant in charge of the OPP detachment here. He has been replaced by an operations manager. He has just come on board as of July 7, or he will be coming on board. The successful candidate has been Mr Ernie Beale, who, just to give you a little bit of background, is an ex-Metro Toronto Police staff inspector. He's got over 30 years' service in a very well-rounded career. That will give us a little bit of a link with the Metro Toronto Police. I'll speak about how important that is in a moment.

Our security systems manager is just that. He will look after anything dealing with systems. We will be looking at a fully integrated security system that will be phased in. Again, this will all be passed through the security committee that the three caucus members sit on.

1720

Moving right along, the communications centre with the radio dispatchers will fall under the security systems manager. By the way, he has been on board now for three weeks. He's got quite a bit of systems and communications background, but the added bonus is that he's a 29-year member of the RCMP who retired at the sergeant level. A lot of his experience was in communications and security systems within the RCMP, so I feel quite fortunate to have him aboard.

This is presently under review. I will try not to get into the small detail as to ranks, but the two group commanders are the staff sergeants, and they have been named. But these people under here, the platoon supervisors and all the constables, a total of approximately 45, are presently being taken aboard right now. The security officers who were here were under the OGPS, which reported to the Solicitor General through the OPP. As I stated, they're being phased out. The applications went out to the OGPS, in other words, the men and women who did work in this building, along with the other government

buildings where there are OGPS security officers. We had over 100 applications, so I'm quite confident we're going to get a very good nucleus of security officers here, and the vast majority who are here right now will probably get on, which I'm quite pleased with.

Unless you want, I won't go into the platoon system and how it works in the sessions, for instance, or the men and women who work up in the galleries and what not.

Mr Curling: Are you going to tell us the scope of this afterwards?

Mr Clark: It's up to you, sir.

Mr Curling: This is a basic question: Could you tell me why they phased out the OPP if they are having —

Mr Clark: I believe it was as a result of the legislative security committee. That was one of the recommendations, that they go to a standalone. I suspect it had something to do with communications. When you have a standalone security service, I think the communications link to the supervisors is much easier. With the OPP, in all fairness, they had to report to both the Sergeant at Arms plus their own OPP brass. And it was a combination of other things in which I don't have the background.

Mr Curling: I just wondered, because this building in many ways is Ontario. This is where the legislation is. It's also a big tourist attraction. I think the OPP, with their gallant uniforms and all that, made quite an impression. Again, maybe this is going into a debate that took place some time ago, but I never did get an explanation as to why they would be phased out. I heard a bit of that, that the administrative process and the protocol responsibility were confusing.

Mr Clark: If you want the whole background, I believe M. Morin is on the security committee and he would give you the background, as would Mrs Marland or Mr Christopherson.

Your security unit here will have a distinct uniform. We're working on that now. It will be similar to what they have now, maybe a different colour, but there will certainly be a uniformed presence, which I feel is important.

Mr Gilchrist: Mr Clark, I'm very pleased to see that we will have a more structured, discreet and focused effort. I must say, though, that I'm somewhat taken aback by the complexity of the chart. I wonder if you could tell us very briefly how you would expect an access coordinator to fill 40 hours a week, an administrative and photo ID clerk to fill 40 hours a week, and another administrative clerk and an executive assistant.

Presumably the operational aspects, the uniform aspects — in fact, if you even do the dry-cleaning centrally and don't make the officers do it themselves, which would seem a really reasonable thing — the paperwork involved in running a business that has, just on a quick calculation, 40 people, I would guesstimate, based on my private sector experience, might take three man-hours a week. That's what it took in a Canadian Tire store to run 160 staff, to run the payroll and do all the administrative functions. If the tools in terms of computer access, computerized payroll and what have you are not being placed at your disposal, and your suggestion is we need more manual intervention, then I think we should hear about that.

I personally see this, though, as the start of an incredible empire. The line staff I have no problem with, making sure this building is kept secure. I have an extraordinary problem with administrative people behind the scenes who in most cases probably will be doing functions that duplicate what Ms Speakman and her staff are doing in terms of payroll and everything else. I wonder if you could give us some detail about those behind-the-scenes people and how you think they can fill a workweek.

Mr Clark: Absolutely, sir. No problem. First of all, a lot of the background and administrative work is done by OPP support not stationed here. They are in the other buildings or in their headquarters. For us to be a standalone, just to get back to the total security personnel, I'm looking at it not as an empire; I'm looking at reducing it. I feel that with technology, as we move along, my mandate is to reduce the number of security personnel, whether it be admin or front-line officers, through technology. As I go through our presentation here, hopefully I can answer some of your questions. If I don't, by all means come back.

Mr Gilchrist: Fair enough.

Mr Clark: Right now, we have an access coordinator. For instance, the admin and photo ID clerk, Mr Wayne Butt, shares that half-time as a legislative attendant. The locksmith service is just on a contract. The communications operator, they have five FTEs down there, person-years, and I'm reducing that to four, because I feel I can cover off with one of the members. So, on the contrary, I feel I'm going the other way.

Mr Gilchrist: Let me stop you there. I took from your presentation that this was what you were moving towards. So you say that five is not the accurate number, that it should be four?

Mr Clark: This is my proposal that I'm working on right now. That has changed to four. Like I said, the executive assistant to the Sergeant at Arms, do I need that or do I need an admin support person? This is just a proposal that I'm putting together. I have mentioned the ones we do have in place: my operations manager and my security systems manager. I'll come back to that, sir.

Mr Ouellette: Can we have a copy of that handout so we can actually see it? It was rather difficult to read a lot of the information.

Mr Clark: I can make handouts, keeping in mind that this is all proposal.

Mr Ouellette: It's just a proposal, but we can't read all the fine boxes that were displayed there.

Mr Clark: Okay.

Mrs Marland: I guess we are on the record. I was going to say it may be that we don't want this carved in stone and being handed around until we get it out and going. I don't know. There is that aspect.

Mr Ouellette: It's on Hansard already.

Mrs Marland: That's right.

Mr Clark: You can certainly have all the copies you want, keeping in mind this is a proposal that I'm working on as of this date and it will change. I think that's important to know. It's also important to know that there will be no changes until it has passed through the proper channels and the security committee, on which there is a member of your caucus.

Mr Curling: Are you seeking approval of these recommendations from us? From what I read here, it says it's a semi-annual review of what is happening, but then you're saying that it's a proposal, that this may change. So you would have to come back to us and say, "Here is our recommendation." This is not the final recommendation then.

Mr Clark: These recommendations that I'm showing you are actually approved by the security committee that Mrs Marland, Mr Christopherson and Mr Morin are on. They have been approved. To me, that's my mandate to put this into action.

1730

Mr Curling: But the chart —

Mr Clark: The chart is simply what I'm working on now, how the organization may be structured.

We'll go to the next one. Can you read that? No? There are 10 recommendations. I just picked out the ones I think are more prevalent.

Recommendation 3 was: "The committee...recommends that:

"(a) backup security services for the legislative grounds should be provided by the Metropolitan Toronto Police," Division 52, "as agents of the restructured legislative security service, and that the proposed Speaker's advisory committee on security give further consideration to the particulars of this recommendation."

On that, what I'm presently doing is a draft memorandum of understanding with Metro Toronto Police, Division 52. I'm working with Superintendent Jim Parkin and their legal adviser, Mr Rusty Beauchesne. That MOU will set the groundwork as to when and if we call in the Metro Toronto Police for any law enforcement duties. One of the reasons for that is, obviously, with the OPP going, we will no longer have peace officers on staff; we will have special constables. Therefore, it is necessary that we have an understanding with Metro Toronto that if they are required, they will do any actual peace officer duties.

They will also look after, as they do now, the exterior of the grounds. I do have some concern on that as far as patrolling the grounds is concerned. Right now the security service, meaning right here, does not patrol the exterior. I am looking carefully at that in light of all the car break-ins, the incidents we had during the filibuster and so on.

I haven't had a chance to look at the second part yet. It says, "(b) a security protocol be established between the legislative security service and the providers of security for the Premier..."

Right now, the OPP do any VIP bodyguarding. What we may look at in the future is having the OPP bring the Premier to the front door and then we take over from there. But that, again, is down the road. It's not a major priority right now.

Mr Ouellette: I have a question on that. With these arrangements made with the OPP or Metro, what is the cost for this? Is there any cost to us, or is there billing for it, or how is it being handled?

Mr Clark: For the services themselves?

Mr Ouellette: Yes.

Mr Clark: Regular police services will be no cost.

Mr Ouellette: When you say "regular police services," do you mean patrolling of the yard?

Mr Clark: If we have a large demonstration and somebody is arrested, we have the authority to arrest and detain. We will call Metro Toronto; they will come and pick them up. Something like that will be at no cost. However — again, this is under review and within a memorandum of understanding that we're trying to work out — if we ask them to come in and do a sweep of a room or something like that, and if it's our call, then yes, they may charge us.

Mr Curling: What about the horses? I see many horses come around when we have demonstrations. Is that an extra cost?

Mr Clark: No, sir. That's their prerogative.

Mr Ouellette: The patrolling of the yards, as you mentioned, is there a cost for that?

Mr Clark: No, there isn't. In the memorandum of understanding, right now the way it reads, they'll do periodic patrols. Again, I have a little difficulty with that when we're sitting late at night, because the cars are vulnerable out there and obviously in this vicinity people know that. I'm looking at possibly our security officers doing exterior patrols, especially at night.

Mrs Marland: The way they used to.

Mr Clark: Yes, I understand that.

Mr McLean: There have been more radios and telephones stolen in the daytime.

Mr Clark: This is where we get into some of the technology we're moving towards. Recommendation 5 was entry and exit protocol.

"The committee...recommends that the entry and exit protocol for precincts should be reformed along the following lines:

"(a) the number of public entrances to the Legislative Building should be reduced, but not so as to...affect wheelchair access or access to people with disabilities;

"(b) most visitors should be allowed into the Legislative Building only from a dedicated visitors' entrance;

"(c) a more sophisticated entry and exit protocol... should be developed...; and

"(d) there should be a review of the after-hours access policy..."

Also following along from that, recommendation 7 has to do with video surveillance:

"The committee...recommends that:

"(a) surveillance structures that are maintained within the precinct be consistent with the dignity of the institution.

"(b) the proposed Speaker's advisory committee should review the propriety of further installations."

You can see that the Speaker's advisory committee is very important to this, because as we move along, we will be passing any recommendations through them.

Mrs Marland: So you're not making any decisions about which doors and which access and what video without coming back to the three members of caucus?

Mr Clark: No. What we will do is, and it's under review now, put forth a number of options we're looking at, and it will pass through the necessary channels.

Mrs Marland: In light of the difficulty with the budget for the operation of the Legislative Assembly, it isn't necessary for this committee to consider sending delegates to this annual meeting and exhibition, the National Conference of State Legislatures, in Philadelphia from August 6 to 9 of this year. I've just looked through the program, and frankly I don't see a necessity for us to send anyone to that conference.

Mr Baird: I would just concur with Mrs Marland's comments. If there was a specific reason why we would want to go, I think it would be a good idea, but there doesn't seem to be, in my judgement, a specific reason; if there was something like legislative security or standing orders, where there would be some benefit members could bring back, but in my judgement there isn't.

I was wondering if we could find out and if you could endeavour to research this and report back to us as an agenda item at the next meeting as to whether other committees or others at the Legislative Assembly outside of this committee are going.

The Chair: The question is, are there any other —

Mr Baird: Other committees or others —

The Chair: — persons, excluding this committee, who would be attending this conference?

Clerk Pro Tem (Ms Tonia Grannum): From the province of Ontario?

Mr Baird: From the Legislative Assembly.

Clerk Pro Tem: From our Legislature.

Mr Gilchrist: Or from the ministry level as well.

The Chair: We can undertake to do that.

Mr Baird: Terrific.

Mr Curling: Are we saying — maybe I'm a bit tardy on this — that the conference before us, which is August 6 to 9, and the content therein is not relevant to what we want to do, so we won't participate, there's nothing on the agenda? Is that what I'm hearing? There's nothing on this agenda that would be of interest to us, and that's why we're not participating. Is that the reason?

Mr Baird: That's my argument.

The Chair: That's the position taken by Mr Baird. That's his submission.

Mr Curling: I cannot even make an intelligent decision on that, because it wasn't raised in caucus or anything and it's the first time I'm seeing this. I presume this has been floating around for some time.

Mr Baird: I was only made aware of it today.

Mr Gary Fox (Prince Edward-Lennox-South Hastings): Likewise.

Mr Curling: Immediately, one look at it, we feel it's not relevant to us?

The Chair: The subcommittee discussed it. There has been attendance in the past. The cost, if it was fully paid for each person to attend, would be something in the range of \$2,000.

Mr Curling: It's because of the cost, you said. Is it the cost that impedes us from going?

The Chair: No. It's a decision of this committee as to whether it wishes to have someone attend, and then it would have to be approved by the House.

Mr Curling: I'm hearing that it just arrived today. I just saw it today.

The Chair: It has only been on the agenda today.

Mrs Marland: I hadn't seen it before.

The Chair: It wasn't on a previous agenda, no.

Mr Gilchrist: Is somebody making a motion one way or the other?

Mr Curling: What was that?

The Chair: It's 6 of the clock right now.

Mr Curling: I just want to have an understanding, Mr Gilchrist, of what the hell we're talking about.

Mr Gilchrist: That's why I'm asking the question if somebody wants to make a motion so we can vote, recognizing that it is now one minute to 6.

The Chair: Anything else on number 4?

Mr Curling: I won't pursue it any more. I don't mind one way or the other on the motion, but the reason why is that you say there is a cost factor and there is nothing relevant to us at this conference, that's why we won't be attending?

The Chair: Mr Baird has indicated what his position is. If you want him to repeat it, he can.

Mr Curling: No, no.

The Chair: Mrs Marland indicated what her position was with respect to this conference. It's for the committee to decide.

Mr Curling: I know that, Mr Chair. That's why I asked when it arrived here. Mr Baird has acquired a quick, fast read of it.

The Chair: It has been on our agenda as of today.

Mr Baird: If we're going to take this junket, the taxpayers' money shouldn't pay for it.

Mr Curling: Oh, so that's why; it's a junket, he said.

The Chair: He's obviously not going to be in favour of it.

Mr Gilchrist: I would concur. It's a four-day event, and looking through there, there's arguably only one or two sessions that have any relevance to the Legislative Assembly committee as we're constituted. I don't think anyone would countenance spending money on a four-day conference with travel to the United States to attend one or two sessions.

In fact, I would perhaps suggest that, at the end of that conference, you or the Clerk might undertake to see if there's a written transcript we could order free of charge or for a nominal amount of money, and all of us would have benefit of all the discussions that took place.

The Chair: You're asking us to find out if there's a transcript and what the cost is, for the conference. Any other discussion on this? Tony Silipo?

Mr Silipo: No. I was going to suggest that we adjourn, Chair.

Mr Baird: I have another very short point.

Mr Silipo: It's just a suggestion. I haven't moved it, Mr Baird.

Mr Baird: This is an issue I have noticed; it's a non-partisan one. I was going to ask if it would be possible to have the issue looked into and then perhaps circulated to all members of the committee. I've noticed in recent months and was wanting to get an idea of what changes have been made in the last year with respect to the entrance used by visitors at Queen's Park.

To my knowledge, and this is just my knowledge and experience, visitors used to come in through the front door, where they would have access to the public rela-

tions information desk, the gift shop, ample waiting room, both seated and non-seated, and a permanent coat check. I now notice that visitors are being directed to walk around on the grass to the side door here at the west door and congregate behind roped lines in the hallway. We have in this heritage building a beautiful coat check built right into the wall, a gift shop, a parliamentary information desk where people can get public relations information, a gift shop, a waiting room where people can sit.

The Chair: Mr Baird, the clerk has a response if you want to listen to it.

Mr Baird: Okay. I'll just conclude. As well, outside here in the hall there's a pressed wood chipboard desk with some Tupperware containers that litter the hallway 24 hours a day, as well as some cheap coat racks. We have such a beautiful entrance for visitors at the main door, and I just wondered why, if we could investigate that.

The Chair: The clerk may have a response that you want to listen to.

Clerk Pro Tem: Members of the public are still able to come through the front door. What has been happening is that there have been large groups coming in, so security has felt it's easier to control the large groups or demonstrators who come into the building if they come in through the west door, because there's a security desk right there. They can rope it off if there's a problem with a large group. They put the coat check there, sign them

in, send them up to the chamber if they're going to the chamber or control them going into the overflow room. But it's usually when they know a large group of people is coming.

Mr Baird: They're doing it every day, and it just seems to me to be absolutely silly. We have a beautiful front entrance. Visitors should be welcome to come right in the front door. We've got a great parliamentary public relations office right there at the front door to greet them, a gift shop, there's a security desk at the front.

Clerk Pro Tem: Lately it has been because of Bill 99, the public hearings.

Mr Baird: No, it has been like that for months.

Clerk Pro Tem: I know, but there was Bill 103, then Bill 104, then Bill 99. But what we can do is look into that and get a response.

Mr Baird: Great. I just think we want to be welcoming, and it seems there are all those amenities right at the front entrance. People go to the front door when they come here, and they're directed to go around the side. I've seen senior citizens sitting on the floor outside the committee rooms here and on the first floor just because they have no place to sit down. There's comfortable seating for them at the front entrance. It just seems to be not very welcoming if there's not a good reason for it.

The Chair: Thanks very much. Point taken. We'll adjourn the meeting. The next meeting is scheduled for August 20, 1997.

The committee adjourned at 1801.

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Tuesday 15 July 1997

Journal des débats (Hansard)

Mardi 15 juillet 1997

Standing committee on
the Legislative Assembly

Report, Integrity Commissioner

Comité permanent de
l'Assemblée législative

Rapport, commissaire à l'intégrité



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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 THE LEGISLATIVE ASSEMBLY**

Tuesday 15 July 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DE
 L'ASSEMBLÉE LÉGISLATIVE**

Mardi 15 juillet 1997

The committee met at 1004 in room 151.

REPORT, INTEGRITY COMMISSIONER

Consideration of the June 25, 1997, report of the Integrity Commissioner.

The Chair (Mr Joseph N. Tascona): I would like to welcome everyone here today to the standing committee on the Legislative Assembly. We're here to consider the June 25, 1997, report of the Integrity Commissioner. I believe everyone has been provided with a binder. I believe everyone has been provided with a copy of the standing committee on the Legislative Assembly subcommittee on committee business report. On that basis, the report is before you. Is there any discussion or are there any motions etc?

Mr Tony Clement (Brampton South): I have a series of motions to amend the subcommittee's report.

Mr Tony Silipo (Dovercourt): Would you like a motion to adopt the report first? Would that be in order?

The Chair: We'll have a motion to adopt the report first. Is there any discussion on that?

Mr Clement: I'd like to move a series of amendments which I have had the ability to typewrite. I'm willing to submit them to you at this time, as well as read them into the record.

First, I'd like to move that section 5 be deleted and the following be substituted:

"5. That, with respect to the agenda item indicated in paragraph 4(b), the Minister of Municipal Affairs and Housing and the Attorney General will be invited to appear before the committee for one hour each, according to the following schedule: 15 minutes for the witness's opening remarks, and then 15 minutes for questions and responses by each of the parties (beginning with the official opposition, then the third party, and finally the government)."

Second, that section 6 be deleted and the following be substituted:

"6. That consideration of the agenda items indicated in paragraph 4(c) will begin with two rounds of submission, as follows: each party (beginning with the government, then the official opposition, and finally the third party) will have up to 30 minutes to make submissions, after which there will be a second round of submissions for each party on the same terms as the first round."

Third, that section 7 be deleted and the following be substituted:

"7. That the second day of committee meetings will conclude with decisions on motions dealing with agenda item 4(d). At 5 pm on July 22, 1997, all motions moved will be deemed to have been put and voted upon."

Next, that section 8 be deleted and the following be substituted:

"8. That the subcommittee is authorized to work with the Chair to finalize the report based on motions adopted by the committee, including making decisions regarding its adoption, translation and form of presentation. The Chair is authorized to report to the House on the day specified in the July 3, 1997 order of the House after members of the committee have signed off on the report."

Finally, that section 9(b) be deleted and the following be substituted:

"9(b) The committee may have more to say on certain issues raised by the commissioner's report in a forthcoming report by the committee to the House pursuant to the July 3, 1997 order of the House."

I'm prepared to speak to these motions in turn, Mr Chair. Beginning with section 5, I'd like to bring members of the committee up to date that there was a disagreement in the subcommittee between the opposition and myself, representing the government, on who should be invited to participate as a witness in this hearing. I took the position that the appropriate individuals would be the Minister of Municipal Affairs and Housing and the Attorney General. My colleagues in opposition agreed with those two invitations but also, as is represented in the subcommittee report, sought to invite the commissioner, the chair of the Health Services Restructuring Commission and the Minister of Health.

My own view, on behalf of the government, is that the Minister of Health and the chair of the Health Services Restructuring Commission are relatively incidental in the sense that although they were the recipients of the letter, their own views on whether the commission is quasi-judicial or not are not relevant because it's the report of the commissioner that is relevant and so their time as witnesses would not be helpful to this committee.

The most important debate we had at subcommittee was on whether it was appropriate to invite the Integrity Commissioner to this hearing. Mr Chair, as you know, during those meetings I felt very strongly that it was entirely inappropriate to invite the Integrity Commissioner for two reasons. The first reason was that according to the motion we are charged, and I think quite appropriately so, with reviewing the report. The report is the report. Any extraneous comments or opinions of the commissioner are not relevant to the report. We are charged with the responsibility of reviewing the report, not other opinions that the Integrity Commissioner may have.

I see this as akin to a judgement by a judge where the judgement of the judge stands and there is no right to cross-examine the judge in those circumstances, based on why he said this or why she said that. That was the first reason.

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The second reason I felt strongly that it was inappropriate to invite the Integrity Commissioner was because the motion that submitted this report to this committee for consideration said that we are to report both to the Legislature itself and the Integrity Commissioner. I felt it was entirely inappropriate to ask the Integrity Commissioner to participate in these hearings when in fact we are reporting to the Integrity Commissioner. We should report to the Integrity Commissioner based on our own views rather than be coloured in our views based upon the Integrity Commissioner's views when we are in fact reporting to him.

For those two reasons, I sought to amend section 5 of the report.

Section 6 of the report is a minor amendment saying that when we get into our rounds of discussion we should logically start with the governing party. I had a discussion with the clerk as to whether to call an additional subcommittee meeting because when I saw the written word on our subcommittee report I wanted to seek this clarification. He advised me that the best way to do it, rather than have another subcommittee, is to do it here. This mirrors how debate occurs in the Legislature and I wanted us to be as close as possible to the norms and procedures that occur in the Legislative Assembly.

Section 7 again is a minor clarification based on the subcommittee's discussions that I suggested. It was agreed that 5 pm on July 22 would be the time at which all motions would be deemed to have been put and that they would be voted upon at that time if they had not been disposed of prior to that particular time.

Section 8 is slightly different than the one that was originally before you, in the sense that section 8 indicates, "That the subcommittee is authorized to work with the Chair to finalize the report based on motions adopted by the committee...." I believe that was the understanding of the subcommittee, that we couldn't go on a frolic of our own and come up with things that were inimical to what the committee had wanted, but I wanted to put it in writing that any subcommittee report was based on motions that were adopted by this committee and so would take its direction from the committee.

Finally, section 9(b): The only change I sought to have was rather than "the committee will have more to say," I thought that "the committee may have more to say," which did not presuppose that we would have more to say.

The Chair: Anything further?

Mr Clement: I think that's about it.

Mr Silipo: There are a couple of things I want to say with respect to the amendments. First of all, with respect to the amendments that deal with sections 6, 7, 8 and 9, I think that they actually are a clear reflection of the decisions that we made at the subcommittee, and I would be happy, if you wish, to incorporate them, to adopt them as part of the main motion, however you wish to deal with them, because I believe they reflect more clearly the consensus we arrived at on those items. Procedurally, if you want to deal with them that way, I'd be happy to do that.

I have of course real problems with what Mr Clement has moved with respect to section 5. As he pointed out, this was an issue on which there was substantial disagreement on the subcommittee between him on the one hand and myself and the Liberal caucus representative on the other.

Let me just focus in on particularly the one area I feel really strongly about and where I feel the government members are completely off base in their position, and that is their refusal to have the commissioner appear before the committee. I believe we can't do our work properly without having the commissioner here.

I want to be really clear here, as I was, I hope, at the subcommittee, that in asking for the commissioner to come before this committee I am not interested, nor quite frankly are we allowed as a committee, to get into in any kind of detail the issues that took place that led to the commissioner's report, because of course the Members' Integrity Act states very clearly that the assembly, and therefore the committee, doesn't have the power to inquire further into the contravention or to impose a penalty if the commissioner recommended that none be imposed or to impose a penalty other than the one recommended. That's quite clear and I certainly intend to abide by that, as I'm sure will every member of the committee, and as I'm sure you will make sure we all abide by that, as we deal with the witnesses who will come before us and the work we will do.

My point in having the commissioner here is not to debate his findings. I made that very clear at the subcommittee and I want to make it clear to the government members particularly. My point in having the commissioner come before us was primarily to clarify the one issue over which there has been significant disagreement between the government members and the opposition, and that is the question of penalty. It's our contention, and it's certainly supported by our reading of the legislation, supported by, I understand, the information we received from the commissioner's office; that the commissioner, in determining whether there should be penalty in this instance or in any other instance, does so with respect to the member's status as a member of the Legislative Assembly. He does not and cannot determine any question of penalty with respect to the member's membership in cabinet.

You'll recall, Chair, that when the report was tabled we asked a number of questions of the Premier with respect to his responsibilities in continuing to accept Mr Leach as a member of cabinet despite the fact that he had been clearly found to have breached the Members' Integrity Act, albeit in good faith, as the commissioner finds. But he has been found to be in breach. The fact is that this is the third time Mr Leach has been found in one way or another to have breached various conventions or rules of the Legislative Assembly or the province.

The trouble I had and that we have is in the Premier's continuing positioning in saying, "I'm accepting the commissioner's findings, I'm accepting the commissioner's report and therefore I have to do nothing more." Our point is, you can't do that. You may decide you want to do nothing more, that's fine. It's not fine from where we stand. It may be fine from where you stand, but you

can't do that by hiding behind the commissioner's report because the commissioner has no jurisdiction to tell the Premier whether a certain person should be in cabinet or not. It's the Premier and only the Premier who determines that issue.

I wanted to have the commissioner here so that we could put those questions to him and clarify that issue, because I fully expect members of the government aren't going to believe my interpretation. It's quite frankly not convenient for them to believe it, but they might very well believe the opinion of the commissioner if he was sitting here in front of us explaining what his jurisdiction is and what his jurisdiction isn't. I think we are doing a complete disservice to the whole process if we are not clarifying that very substantial issue.

I want to again reiterate that this is my only concern and my primary wish in having the commissioner present. I even suggested, and I'd be happy to reiterate, that if we needed to clarify that with a motion that makes it very clear we are calling the commissioner for that reason only, we could do that, although I don't think the commissioner would need any sort of parameters to be set by us, because he would be the first to tell us if we were to get into grounds we have no jurisdiction to be in and simply not answer those questions.

I believe this is a very fundamental issue that needs to be addressed and I think the government members, as I say, are doing a complete disservice if they are refusing to call the commissioner. I ask them to reflect on that and the kind of shambles these two days of committee process would be if we were to be prevented from calling people, in this case the commissioner, who would be able to shed some light on some very important points we have to deal with as part of our work over the next couple of days.

I equally support the request to have the Minister of Health and the head of the restructuring commission here because I think that obviously all of this hinges around the question of the health restructuring commission. We know the Minister of Health has made some very clear statements in the House on this point and I think it would be useful to have the minister here for us to get from him directly the interpretation he puts, as well as that of the head of the restructuring commission. I think the government members are trying to truncate a process here by not allowing these three important people, and particularly the commissioner, to appear before us.

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Ms Annamarie Castrilli (Downsview): Let's remember for a moment why we are here. We are here because a member of our assembly has been found to be in breach of one of the most serious pieces of legislation we have: the Members' Integrity Act. It is a piece of legislation that sets a high standard for all of us. One of us has been found wanting, and as has been pointed out, it's not the first time; it is in fact the third time.

We are also here because the Integrity Commissioner has said very clearly that there has been not only a breach of the act but a flagrant contempt for parliamentary convention. That's a very, very serious charge.

We are here, finally, because we are required under the Members' Integrity Act to consider and respond to the

report which has been placed before the Legislative Assembly, and the Legislative Assembly has delegated that responsibility to us, to make a report to it and to the Integrity Commissioner on this.

We are not here to whitewash what has happened. We are not here to be part of a sham exercise. We are here to look at the report, to look at it seriously, to use the means available to us, which means questioning, which means prodding, which means finding information that is relevant to our decision-making process and to the report that we will ultimately have to make. That's why I'm here. That's what I hope you are all here for.

That, to me, means some very basic, fundamental things. I agree with Mr Clement that we are not a court of law and we are not supposed to second-guess the issues before us and the comments that the Integrity Commissioner has made, but we are a vehicle of the Legislative Assembly. The only way in which we could consider this report fully is to have all of the parties before us and to be able to ask the relevant questions, to inform ourselves on the substance of the report, to make sure that there are no inconsistencies and that the report is clear in our minds. We are certainly not to second-guess what is in there, but we do have a responsibility to the assembly, and the only way we discharge that responsibility is to have all the participants before us and all the facts in this case clearly in our minds.

It is unthinkable that you would begin this process without the individual who wrote the report, the Integrity Commissioner. It is unthinkable that we would not have him here to ask the relevant questions. This is not a court of law, as has been said, and we would certainly not be putting the Integrity Commissioner to any cross-examination, but there are things we need to clarify. We've already proven that. The leader of my party already had to write a letter requesting clarification on the report and what the issue of penalty meant. There are some substantial issues for us to consider on the issue of penalty, and the only person who can give us that kind of information is the Integrity Commissioner.

The report deals with health issues, with the hospital restructuring commission and the Minister of Health. It is again unthinkable that we would proceed without those individuals before us to explain to us what their understanding is, what the practice is, and in particular with respect to the Ontario hospital restructuring commission, the kind of expectations they have vis-à-vis this government and the issue of interference. These are all questions that have to be put.

I ask you why we would have a hearing that misses some of the major components, why we would even bother being here without the Integrity Commissioner, without the Minister of Health, without the head of the Ontario hospital restructuring commission. What's the point? That really is finally the question.

I have said in subcommittee and I will say to you again, I will not be part of a sham process. I certainly hope that all of you are interested in having a full and fair discussion of the ideas and a complete report to discharge our obligations to the House.

The Chair: Just a point of clarification, Ms Castrilli: I believe you were speaking on point 5.

Ms Castrilli: I was indeed.

The Chair: Mr Silipo indicated that he was in agreement with 6, 7, 8 and 9. Are you in agreement with those too?

Ms Castrilli: I consider 6, 7, 8 and 9 to be points of clarification, not of substance. Number 5 is really the key here.

The Chair: So I take it that you would adopt Mr Silipo's position.

Ms Castrilli: I certainly adopt the position that I agree with the amendments as being clerical in nature.

The Chair: I take it that you agree with him. Mr Kormos.

Mr Peter Kormos (Welland-Thorold): I agree with him too because he told me to agree with his comments regarding 6, 7, 8 and 9.

Mr Silipo: That's a surprise, that he would agree with that, for that reason anyway.

Mr Kormos: I wasn't at the subcommittee meeting, Chair.

Interjection: Where were you when Bob Rae needed you?

Interjections.

The Chair: Excuse me. I can't hear Mr Kormos.

Mr Kormos: Let me put this to you. Let's cut the crap. At the end of the day, this isn't the most serious violation of the Members' Integrity Act that could ever be contemplated. There's no two ways about it.

It would be interesting, and I'm surprised the government would propose that the head of the restructuring committee not be here, because the head of the restructuring committee would be in a position to say that he felt no pressure or influence as a result of this letter, that he dismissed it or treated it — probably dismissed it, but treated it with as much regard as he would a letter from any other MPP. Or he might say that yes, he felt this was an intrusion on his role as the head of the restructuring commission.

I suspect — I have no idea; that's why it would be interesting to hear from the person — that it would be the former. I suspect he'd indicate that this didn't have any more impact on a decision that he made or that his committee made than any other letter from any MPP. We understand, I think pretty clearly, that any MPP would have been entitled to write this letter. The difficulty here was Mr Leach writing the letter while being a member of the cabinet.

I'm prepared to concede, as I indicated right off the bat, and I hope others would be in agreement, that this isn't the most egregious violation in terms of the impact, in terms of what flowed from it. That's why I'm surprised that the government wouldn't want to hear from the head of the restructuring committee. I think it would be very interesting to hear from him because I suspect the comments that would be made there would mitigate — I think that's the word that might be used — for Mr Leach in that no damage was done.

I'm surprised as well that the government wouldn't want the commissioner here, because they are the ones who, in their argument during the course of questions and debate over whether the matter was going to be addressed as the act requires, brought the commissioner into the

debate, both in responses during question period by the Premier and by Mr Leach. Mr Leach was oh, so ready to quote the commissioner when the commissioner said, "I recommend that no penalty be imposed." The commissioner said that; there's no issue to it.

Look what else the commissioner said. He said very clearly, "I am satisfied that the Honourable Allan Leach contravened the Members' Integrity Act, 1994 by communicating with the chair of the Health Services Restructuring Commission." Bang. It's said and done. There's no question with that.

He knows what the act requires him to do. He makes this finding, no two ways about it: Mr Leach contravened the act. Then he has to contemplate what penalty he, the commissioner, will impose pursuant to the act. I'm sure Mr Clement understands that. So he considers the circumstances and basically says, "Look, he contravened the act, but it was as a result of his stupidity." Okay? Don't pull the wings off a fly. The commissioner wasn't prepared to be malicious in his response to Mr Leach's contravention. He dismissed Mr Leach, talking about his "limited experience in government" and his "mistaken belief that he was entitled to do so," referring to good faith based on mistaken belief.

There's good faith and then there's good faith based on mistaken belief, and I think those are very much two different things, because one is good faith; the other is good faith based on ignorance. Not all good faith has to be based on ignorance. Good faith can have other sources.

But he does say it was "an error in judgement." That seems to be a pretty clear finding as well. While the Premier, when questioned about Mr Leach's capacity as a minister, refers to the third paragraph, "I recommend that no penalty be imposed," he has declined to make reference to the commissioner's finding that the minister displayed an error in judgement. That seems to me something the Premier should be horribly concerned about.

1030

The comments Mr Silipo made about what the commissioner was actually doing here seem to me to be pretty irrefutable in terms of the manner in which the government has utilized the commissioner's final obligation, and that was to determine what penalty he was to impose under the act vis-à-vis Mr Leach's rights as an MPP. Those are the only concerns the commissioner has, and you know what they are. They can be an admonishment, they can be a suspension or they can be getting turfed from the Legislature, effectively forcing, I suppose, a by-election.

The commissioner says, "Look, under the circumstances, I don't think this member, this MPP, should be admonished," although having said that, this report is a pretty significant admonishment, especially since it refers to the prior errors in judgement. You see, Mr Leach is a recidivist, after all. Maybe we should be calling Mr Runciman as one of the witnesses.

What's interesting is that the government would want to delete Jim Wilson, the Minister of Health, from the persons called. Jim Wilson seems to have known that it would be improper for a minister, a member of cabinet,

to do what Mr Leach did. It appears, as a result of questioning and references made in the House, that Mr Wilson very specifically, when it was suggested to him that he might perform this role, dismissed it out of hand, saying that of course no minister can write this sort of letter.

As I say, I don't regard this as the most serious breach, subject to what the head of the restructuring commission might say. By God, if in fact he quaked and he trembled upon receipt of that letter and worried about how he was going to accommodate the minister, then we'd be persuaded otherwise, but I suspect he didn't.

When Ms Swarbrick and Ms Martel wrote relatively innocuous letters to, as I recall it, the College of Physicians and Surgeons of Ontario, merely urging speeding up a hearing process, a disciplinary process, merely urging the expediting of it, they regarded that, although benign and certainly as benign as this conduct, as compelling enough to tender their resignations from the cabinet. I'll tell you quite frankly, the Premier of the day accepted those resignations. It was only at the urging of the Leader of the Opposition that he reversed his position, which wasn't unusual for that Premier.

When Evelyn Gigantes intervened, in my view entirely appropriately, in a dispute among a co-op housing program in Ottawa, quite frankly, from a perspective as a member of the community, as a member of the Legislature, she was doing what I would like to see ministers do. She was trying to resolve a conflict that was developing within a co-op housing project in Ottawa that threatened the vitality of that project.

I'll be quite candid: I was proud of what she did. I thought she did exactly what her constituents and her office would have required her to do. But as it turns out, this very much good-faith exercise, in good faith and with the best of motives, caused her to tender her resignation, understanding that it breached the letter of the high standards that ministers are held to.

Evelyn Gigantes, utilizing a briefing note that had been given to her that all ministers receive, which made reference to a recipient of out-of-province health care treatment of a particular type, in the pressure and turmoil of question period mentioned the name of the recipient of the health care, totally inadvertently. That was inadvertence. Mr Leach can't claim inadvertence here. He knew exactly what he was doing; it wasn't a mere slip of the tongue. Hers was a mere slip of the tongue, again as Minister of Health, with no intention of breaching the standards. It was a pure, total accident, pure inadvertence, but again, because of the standards to which ministers are held, she felt compelled to resign.

The government has circled the wagons on this one, they really have, when at the end of the day there's no need to. I'm convinced that before the day is over they're going to be confronted with far more serious violations of standards by their ministers than this consists of. But I believe we have to address the way the government has hidden behind Judge Evans's comment that "no penalty be imposed." We have to clear the air on that.

I agree with Mr Silipo, and I'm confident others would, that if the committee wants to restrict the nature of inquiry solely to what Judge Evans — again, he may

well come here, and I agree we can't go beyond what's written here, but we have an obligation to ask him, when he said, "I recommend that no penalty be imposed," did he mean what Premier Harris says he meant and what Al Leach says he meant or did he merely quote clause 34(1)(a) of the act, which says that no penalty be imposed? If he meant what Mike Harris says and what Al Leach says, by God, I will live with that. We'll have to; we have no choice. But if he meant merely to cite 34(1)(a) that no penalty be imposed, which was his obligation and is the only way he could wrap up his report, then I suggest the government has got to live with that, and Mr Leach has certainly got to come clean.

There has been a total denial. This is like the little boy who wet the bed, on Mr Leach's part. It's absolute denial. He spent day after day insisting that he was as clean as could be. This isn't the worst possible thing to acknowledge having made an error about, and I think that's what this committee has a responsibility to do.

I'm disappointed in Mr Clement's comments. I think we could call the commissioner with a very restricted range of inquiry based on, was he merely citing 34(1)(a) when he said "no penalty be imposed" or was he venturing further, as Mike Harris and Al Leach would insist he was?

I believe we have to listen to Jim Wilson and understand why Jim Wilson knew it was wrong to do what Mr Leach did but Mr Leach didn't. I believe it's in everybody's interest to hear from the head of the restructuring commission, in all likelihood to be told that this letter meant diddly-squat to him and he could give a tinker's dam what Mr Leach wrote. It may hurt Mr Leach's feelings and diminish his stature, but that's okay at the end of the day.

We also have to focus on the fact that there was an error in judgement, and Mr Leach and the Premier have preferred to rely on other comments based on the commissioner, without addressing the totality of the report and the conclusions.

The Chair: Thank you, Mr Kormos. I would just make a comment at this point in time. We've got a subcommittee report before us. We've got two days scheduled, but I have Mr Leach scheduled for this morning only. If you want to debate this all morning — I've got a number of other speakers — feel free to, but I cannot control the agenda in terms of who is available this afternoon. We have some more people who wish to speak, and we'll go through those. I just caution you that we did invite someone to attend and we've got someone here who you want to speak to it, Mr Leach, so we'll continue on and I'll listen to you. Ms Pupatello.

Mrs Sandra Pupatello (Windsor-Sandwich): No, thanks.

The Chair: Mrs Marland.
1040

Mrs Margaret Marland (Mississauga South): I would like to start at the point where Ms Castrilli ended. She said we're not here to whitewash nor to be part of a sham process, and I want to assure her that I agree with that statement wholeheartedly as a government member.

I also think that if we look very seriously at the responsibility we have here for the next two days of hearing, we're not here for a lynching; we're here to consider the report, and if you want to consider the report, you have to consider only what is in that report. I think the report is very clear. Some of the references that both Mr Silipo and Mr Kormos have made are very accurate references.

There's one thing about His Honour Justice Gregory Evans, and that is that he's very clear whenever he writes, not only in this report that is before us, but I'm referring to page 22 of his report of 1995-96, which is a reference made in Mr Kennedy's letter on this subject. In the last paragraph on page 22 of that annual report of the commissioner he says: "The commissioner disagreed with Mr Cooke's interpretation of the various sections and stated" — and this is another case, but just to show you how clearly Commissioner Evans writes — "...a statute attracts strict rules of statutory interpretation and construction. Each section must be read as a whole."

I draw you to his final findings and I think you have to read each section of his findings as a whole and not split it up in the format that Mr Kormos has just done. There are commas in that sentence in the second-to-last paragraph of Justice Gregory Evans's findings, and it's not there not to be read in its entirety. It says,

"I am of the further opinion that such action was an error in judgement" — comma — "based on his limited experience in government" — comma — "but made in good faith in the mistaken belief that he was entitled to do so."

That's what Justice Gregory Evans is saying. Mr Kormos broke it up and suggested that one thing meant something else.

Then he says, "Accordingly, I recommend that no penalty be imposed."

I think Mr Silipo is perfectly right: Mr Evans is saying that no penalty be imposed. That's the report that's before us and that's what we're talking about. I don't think you can break it up and start to interpret something else other than what is here in the black-and-white printed form before us. To do otherwise does an injustice above all else to the Integrity Commissioner.

In the last paragraph on the very first page of his report he says, "On the basis of the material filed and marked as exhibits attached to my report, I have concluded that the information contained therein is sufficient to provide the opinion requested and that a more formal inquiry is not necessary."

So in fact we are into a formal inquiry, but we are into a formal inquiry because the act states we have to respond to this report. I read this as Justice Gregory Evans saying that more information isn't necessary before this committee other than what is contained in his report.

I think it's very interesting for Mr Kormos to recall the Gigantes experience as an example before this committee, because I don't recall, to tell you the truth, Peter, whether you sat on that Gigantes committee. Did you?

Mr John R. Baird (Nepean): I think he was still in cabinet.

Mrs Marland: Did you sit on the inquiry?

Interjection.

Mrs Marland: I don't recall whether you did or not but, in any case, I would like to tell you, as someone who did sit on that committee, that you're not comparing apples with apples in what you cited this morning. For the benefit of all the other people sitting here this morning who weren't on that committee, if you're going to cite an example, you have to make sure you're scrupulously accurate. In the Gigantes case it wasn't simply a case of a cabinet minister helping some constituents with a housing co-op; it was a case where the judicial system had been engaged. Once that takes place, no one, not even a backbencher, let alone a cabinet minister, is allowed to become involved.

There is a difference also, because the decision on the Gigantes inquiry was written by the counsel to the committee, a very esteemed, highly regarded, capable lawyer by the name of Eleanore Cronk. When that committee decided to ask Eleanore Cronk to write the report, the government, which was the government of Premier Bob Rae, had the power to have the committee write the report or have some other form of the report written, but they decided, as a majority on that committee with the opposition, the report would be written by Ms Cronk. That report was very clear that Ms Gigantes could not be involved where the judicial system was engaged, so you cannot bring that example to this hearing today, I respectfully suggest, because it is not the same issue.

As we are here today to discuss the commissioner's report, I agree with the motion that is suggesting that the necessity to have the commissioner here in person is redundant to the printed report we have from him, which, fortunately for us, is very clear "that no penalty be imposed." There's no denying that he made the other findings, which are critical of Minister Leach in some areas, but they are not the same areas to which Mr Kormos's arguments refer.

Mr Clement: I'd like to have my comments, very briefly, in two parts. The first part is to try to dispose of items 6, 7, 8 and 9 if we can. I understand there is new proposed wording on section 7 that would say, "...all motions will be deemed to have been moved and the Chair shall put all questions necessary to dispose of the matter." I'm quite agreeable to that wording as suggested by the clerk. I was led to believe that this wording was passed by the opposition parties as well. I'm wondering, given the commentary of Ms Castrilli and Mr Silipo, whether we could dispose of my amendments 6, 7, 8 and 9 at this time, after which I do have some comments on section 5.

The Chair: The wording on number 7 is, "...all motions deemed to have been moved" —

Mr Clement: I'm sorry, I thought you had the wording of this — "and the Chair shall put all questions necessary to dispose of the matter." The clerk felt that was more in keeping with parliamentary practice.

The Chair: Okay. Are we ready?

Mrs Pupatello: I have a question to the table.

The Chair: Yes.

Mrs Pupatello: Could you tell me the availability of the ministers today? Is Minister Leach available at a particular time today only?

The Chair: At this point in time, my understanding is that he was scheduled for 10:30. I made an inquiry if he was going to be available all morning; my understanding is yes. I don't know about the afternoon. That's why I'd like to get this finished.

Mr Clement: That's precisely why, Mrs Papatello, I'm trying to move this along, so that we can get to that.

The Chair: Is there unanimous consent on the amendment to number 7?

Ms Castrilli: Could you read that again with the changes?

The Chair: The amendment to number 7 is in the second sentence: "...all motions moved will be deemed to have been moved and the Chair shall put all questions necessary to dispose of the matter."

Mr Alvin Curling (Scarborough North): Only 6, 7, 8, and 9, not 5?

The Chair: Yes. Is there unanimous consent to adopt number 7, as amended? Agreed.

Is there unanimous consent to adopt numbers 6, 8 and 9? So moved.

Is there any more discussion on number 5?

1050

Mr Clement: I just wanted to say something quickly. Hopefully this will be part of the wrapup, because I am very conscious of the fact that the minister did clear his entire morning and we should accommodate him.

My only point is to reiterate that there are two reasons why I felt it was not appropriate for the commissioner to be here this morning. One is that according to the motion that was moved in the House, this committee is to consider the report. We are to consider the report. The report stands on its own. Indeed, Mr Kormos — I'm not trying to put words in his mouth — did itemize the clarity of the report on a number of points and items. I agree with Mr Kormos that the report is clear. There might be some difference in interpretation. That difference in interpretation will always be there. Whereas Mrs Marland made it quite clear that we feel sanctions are not necessary because the mistake was made in good faith — that was the finding of the commissioner — the opposition has every right to put a different interpretation on it.

The second point, which I don't think any of the opposition members have turned their minds to, is that the motion that put this before this committee said, "...consider the report and respond directly to the Integrity Commissioner." We are responding to the Integrity Commissioner. I still believe it is utterly inappropriate, then, to be influenced by the Integrity Commissioner as we attempt to respond to him. That is a process that is unknown in terms of due process.

Given those two reasons, I don't think it's appropriate that we deal with the Integrity Commissioner but that in fact we deal with his report as we were asked to do by the Legislature.

Mr Curling: I sit here and I wonder if we have any respect for the process and whether or not this government can be trusted, in a way.

What I saw here was a subcommittee that met on July 3 and July 7 to discuss the process by which we will deal with this report and this issue — two days. Then a couple of days afterwards, here comes Mr Clement with an

amendment outside all of this, outside the subcommittee. Maybe the backroom boys got him and hooked him and said: "Listen, here's how we can circumvent this thing. Here's how we can undermine this thing. What we'll do is we'll pull out these other people, and we don't need the Integrity Commissioner there." I can hear the discussion: "We don't need the Minister of Health there, we don't need the chair of the Health Services Restructuring Commission; just put the minister there and the Attorney General, and that's it."

Either we have a hearing or we don't have one. A whole bunch of you are here from the government, eight of you, coming here for two days, and then we're going to go through the charade of saying, "We'll just listen to the minister and we'll only listen to the Attorney General, but we'll amend it." What happened on the way from the 7th to the 14th?

The Chair: Mr Curling, I can be very clear with you: We did have the meetings, and in those meetings it was discussed. Mr Clement's position was put forth, and Mr Silipo was very aware of that and Ms Castrilli was very aware of that. It's not something they're surprised by, because I'm not.

Mr Curling: I'm surprised by it, because the fact is I have a subcommittee —

The Chair: You're not on the subcommittee, so I'm not surprised.

Mr Curling: Exactly.

Interjection: Let Mr Curling make his points.

Mr Curling: Yes. Then I see a motion today that has changed this. Isn't that so, Mr Chair? Could you clarify that for me?

The Chair: Yes. When you came to the meeting, you received a copy of the motion to amend.

Mr Curling: Is it the first time we're seeing this motion?

The Chair: The first time you were seeing it, yes.

Mr Curling: That's right, and I'm commenting on that. I'm saying that something happened from July 7 to today, and I am hearing that quite a few people who are very pertinent to this hearing are not being presented, and the government has decided to withdraw them. I'm not here to debate right now the details of the report; I'm just making a comment on number 5, that you have drawn out other members who can be pertinent to this hearing. Something changed along the way.

If Mr Silipo and all those members were privy to all that between July 7 and July 14, God bless them, but I am also on this committee and I am seeing it for the first time and I am saying this is quite a shock to me. It changes the whole direction. How can we trust a government or trust the process with all this change happening? That's what's happening here.

I know Mrs Marland is going into all the other cases and the history, and we can bring up a lot of cases. We can bring in Joan Smith, who was just on a premises and lost her job because of that process, but here we are seeing a minister who knew. We were warned by other ministers in the House daily that we cannot approach the restructuring commission because it's not the right thing to do. When we said, "Could we?" — "No." Then we have a minister who may sit beside the minister in

cabinet and is his colleague who went and violated that. I fully agreed. When I looked at it generally I said, "Maybe I for my constituency would say, 'Whoa, slow down a bit; I would like some more time for my constituents to have some response,'" but that's not the matter right now.

The matter I'm talking about is number 5 that you put forward, which makes us all a laughingstock. I am a laughingstock with this. I tell my constituents I'm coming here to hear this and I want to hear from the Integrity Commissioner his motivation. Mrs Marland is saying that we must read every comma and full stop. Yes, I want to know too from the Integrity Commissioner everything that was said here. He said it's taken in its entirety, but I'd like to ask the Integrity Commissioner some questions, I'd like to ask the Minister of Health some questions and also the chair of the Health Services Restructuring Commission.

But to get it today, to change it is telling me that something happened along the way, and we are fed up with that kind of process. Either we participate as parliamentarians and carry out the process in the proper way, or is it again those backroom boys, the whiz kids, who are telling you, "You guys, see what you got yourselves into?" Damage control here, not to embarrass the government or not to get the whole thing in, is to say, "Let us change all that and only have the Attorney General and the Minister of Municipal Affairs and Housing here." I don't think the whole story will come out.

Those are my comments, and I'm very disturbed by the way things are being done, but it's consistent for this government to change the rules —

The Chair: Mr Silipo.

Mr Curling: I'm not finished, Mr Chair.

The Chair: I thought those were your comments. I presumed you were finished. If you're not finished, you can continue.

Mr Curling: I'll tell you when I am finished.

These are upsetting, and we will continue as an opposition to expose the kind of thing this government constantly does in the Legislature and even outside. Now it's completed.

Mr Silipo: Just briefly, it's obvious from the response we have had from both Mrs Marland and Mr Clement that the government members have been whipped into this position, so I don't hold out much hope that any good sense will prevail and that they will see the wisdom of having the commissioner appear. But I want to push the point —

Mrs Marland: I'm never whipped, I want you to know.

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Mr Silipo: I guess you've all come to the same conclusion independently, then, that you're all going to be obstinate and you're all going to block our doing some useful work. That's fine too.

I want to push the point because I really want to find out whether I'm right in thinking that members of the government are a little bit afraid of what the commissioner might actually tell us, so I want to move an amendment to the amendment, that is to section 5, by

adding the following words at the end of Mr Clement's amendment:

"and that the Chair write to the Integrity Commissioner asking him to clarify whether section 34(1) of the Members' Integrity Act allows or prohibits the commissioner to make recommendations relating to an MPP's membership in cabinet."

I have that in writing for you.

If I could just say briefly, Chair, if the members of the government are not willing to have the commissioner here — I would think if they were really interested in having this issue dealt with, they would not oppose the committee as a committee getting to the bottom through a letter — which is not as good as having the commissioner here, but quite frankly, it's the next best thing — having the commissioner clarify what his powers under section 34 are. I'm quite clear in my reading of them that they don't allow him to deal with the issue of an MPP's membership in cabinet, but I'm prepared to listen and to hear what the commissioner has to say.

I put that as a suggestion and I hope either Mr Clement will incorporate it or members of the committee will adopt it and vote in favour of it. I propose it now because I don't want to get caught procedurally later, once we've dealt with the report, in not being able to put it. I don't put it because it's my first position — it's obviously my next preferred position — but I put it as an amendment.

The Chair: Just to be clear, your amendment is to the amendment proposed by Mr Clement, and it would not fall as a new sentence, but is just taking out the period after the bracket.

Mr Silipo: That's right.

Mrs Papatello: I just have a comment and I suppose a question as a wrapup for Mr Clement, who seems to be leading the charge on behalf of the government members. If we all agree that the Integrity Commissioner's report clearly states that the minister was in contravention of the act, then the only thing we're here to discuss is the penalty: if there should be one, what kind of penalty. Those are the issues.

Any time you ask that question, the one most important thing we're going to look at is what the impact of the minister's actions were. If you don't have the chair of the Health Services Restructuring Commission here so we can ask that commissioner what the impact was, how on earth are you going to properly debate or consider the actions of the minister?

In the end, we may find that it was an error in judgement and that we are agreeing with the result of the commissioner's statement. The point is how, and I need to have an answer before we go forward for a vote. If you can't see the impact of the minister's actions by at minimum being able to address the chair of the Health Services Restructuring Commission, then this is a sham.

You've called a number of people to come into Toronto from our home towns to be here because it was so important and you're not even allowing us to speak to the people who would, may have been or weren't impacted by the minister's actions. I would say that's more relevant than the people you're suggesting be here today, and that is who was impacted by the minister's

behaviour. How do you rationalize, then, suggesting that the chair of the restructuring commission not be here?

The Chair: Mr Clement will have an opportunity to speak on this, but Ms Castrilli is next.

Ms Castrilli: I wanted to respond to Mr Clement's points earlier. I'm glad the minister has joined us, because I want to reiterate that I think it's a shared feeling that this is not going to be a lynching, but neither is it going to be a charade. I am being very forthright with you and telling you none of us on this side want a sham, and I'm glad to hear Mrs Marland say it is the same on the other side. That requires full and fair discussion. That requires all the parties to be here. Anything less is simply not a full and fair process.

The second issue Mr Clement raised and that I thought I responded to, but obviously the message didn't get across, is that yes, this is a report to the Integrity Commissioner, but if you read the motion carefully, it also says we have to present that report to the House. We are also charged under the integrity act to consider the report in its fullness. That again requires having all the parties, all the information for us to be totally informed and cognizant of what we're doing before we submit a report to the House. That's my responsibility as legislator. I hope it's also yours.

Mr Clement: I'm speaking to the amendment to my amendment, I believe, Mr Chair. Is that what's on the floor?

The Chair: Yes.

Mr Clement: I'm a bit perplexed by it because, first of all, my understanding is that any member of the Legislature has the opportunity or the right to correspond with the Integrity Commissioner to seek clarification. We heard a revelation or a statement by Ms Castrilli earlier on in this discussion that the Leader of the Opposition has already written to the Integrity Commissioner to seek clarification on the very points that you raise, so perhaps it would be opportune for the third party to do the same. You do not need the office of the Chair to do that. Any member is within his or her rights to do that directly, so I'm not sure how helpful your amendment to my amendment is in terms of our process, which is two days of public discussion about the report. Those are my comments on the amendment to the amendment.

Mr Kormos: Mr Clement indicated or certainly left the impression, not in these comments but in the ones prior, that he — and Mr Leach, please. There are eight of them, there are only five of us. You're okay. The paddy wagon ain't waiting for you outside the front steps. You got the jury in your hands.

Mr Clement made reference to a disagreement about what the final comment of Judge Evans was and that is, "Accordingly, I recommend that no penalty be imposed." He seems to understand that the opposition is suggesting very strongly that was merely the judge fulfilling his duty under section 34 of the act and utilizing, as it was, the very language of clause 34(1)(a).

Mr Clement is going to suggest there's an honest disagreement about what that phrase meant when used by Judge Evans. I don't think it's an honest disagreement; I think it's a pettifogger's disagreement on Mr Clement's part. We are in this unique position, Mr Clement, that

unlike judgements — I know you were making some analogies to courts and Ms Marland ventured into the field of statutory interpretation, notwithstanding that the judge's report isn't a statute. But the analogies may well be reasonably fair and Ms Marland did well in her argument. We've got the unique opportunity, if there is a disagreement about what the judge meant, to ask the judge. We're in a position to do that. It seems to me such a modest proposal, so simple.

I hear what you said. You said, "Gosh, Lyn McLeod can write or Mr Silipo can write to Judge Evans" — Commissioner Evans. We probably should call him Commissioner Evans because he's a commissioner. He's a retired judge and he's doing just fine. But I think it's important, and my question rhetorically is, why are you fearful of how the judge — the commissioner; you see, I did it myself — might respond to the question, "Is what you meant when you said, 'I recommend that no penalty be imposed,' simply compliance with section 34, or did you intend to endorse Mr Leach's ongoing participation in Mike Harris's cabinet?"

The judge may well say, "Yes, I went well beyond section 34 and I think Al Leach has every right to be in his cabinet," or he could say: "Look, it's not my job to decide who should be in or out of cabinet. My job is to decide whether conduct was serious enough to warrant suspension or expulsion as an MPP, so I make no finding because it's not within my jurisdiction to draw conclusions about whether or not somebody's conduct takes them in or out of cabinet."

It's as simple as that, because you know what I think happened? I think some minions were reading this because they went, "Oh, yikes, the commissioner's report is in today." The minions were reading it, some of the hired help were reading it and they were going, "Oh no, holy zonkers, oh nuts." Then they got to the final sentence and said: "Ah, eureka, look, the commission said no penalty shall be imposed. There's the spin, there's the line."

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It was only when somebody said, "Wait a minute. Has anybody looked at the act?" and some other minion said, "Oh, the act, yikes." They went running for the act, and they said, "Oh oh, I think maybe the commissioner just meant that no penalty was going to be imposed pursuant to his powers under the act." But by then people had become so excited about what appeared to be the penultimate defence for the minister and it had already been fed into the word processors and the little computer things that they figured, "In for a dime, in for a dollar, stick to the 'I recommend that no penalty be imposed,' because it sounded good to us at first instance and it might sound good to them."

If it's an honest disagreement, or even a less than honest one, we're in a position that some mere lawyers and people dealing with court judgements aren't. You can't call Judge So-and-so — well, you could call him, but you can't call him before a subsequent hearing and say, "Judge, what did you mean when you wrote this? What did you mean when you wrote 'bluebell time in Kent'?" or whatever the cute phrase is. You can't do that. I understand that. But here you can. What a delicious

opportunity to resolve this disagreement. It would be resolved once and for all. We wouldn't be at loggerheads. We could carry on with our lives with the knowledge of the certainty of what the commissioner meant.

It seems to me that this is a fine compromise, because it lets the committee write Commissioner Evans, and that way it becomes part of the record of these proceedings. I've got a feeling that if Ms Castrilli or Ms Papatello or Mr Curling or Mr Silipo or I come here with letters from Commissioner Evans, somebody is going to say, "Yeah, so what? That's not evidence of anything," or, "We don't know what the letter meant. It's vague, it's ambiguous. We would have to hear it from the commissioner's lips." Let's get him. He doesn't mind coming. He's just 15 minutes away. We'll go visit him. One way or the other. I don't understand. This seems to me such a fair compromise. It resolves your concern about the disagreement, because you seem concerned about the disagreement. We can address your concern by passing this amendment.

The Chair: We have three amendments before us. The first one is Mr Silipo's amendment. Shall Mr Silipo's amendment to the amendment to paragraph 5 carry?

Mr Kormos: Let's have a recorded vote.

Ayes

Castrilli, Curling, Kormos, Silipo.

Nays

Baird, Jim Brown, Clement, Fox, Gilchrist, Hardeman, Marland, Parker, Papatello.

The Chair: The motion is lost.

Shall Mr Clement's amendment in paragraph 5 carry?
Recorded vote.

Ayes

Baird, Jim Brown, Clement, Fox, Gilchrist, Hardeman, Marland, Parker.

Nays

Castrilli, Curling, Kormos, Papatello, Silipo.

The Chair: The motion carries.

Shall the motion as amended, which is the motion to adopt the subcommittee report as amended, carry?

Ayes

Baird, Jim Brown, Clement, Fox, Gilchrist, Hardeman, Marland, Parker.

Nays

Castrilli, Curling, Kormos, Silipo.

The Chair: The motion is carried.

We have Mr Leach here.

Ms Castrilli: I'd like to make a comment before Mr Leach speaks. I have made it abundantly clear in this committee that I was very concerned about the direction —

The Chair: Is it a point of order?

Ms Castrilli: It is an absolute point of order.

The Chair: Okay, let's have a point of order, then.

Ms Castrilli: I have made it very clear in this committee that I was concerned, and I made it clear in the subcommittee as well, that I certainly would not be part of any process that wasn't full and fair and made the kind of disclosure that we require and allowed us to make the kind of informed decisions that we are required to make before we can discharge our responsibility to the assembly. Because of that and because the majority of the committee is made up of members of the government who aren't willing even to entertain the slight changes that Mr Silipo offered —

The Chair: What is your point of order, Ms Castrilli?

Ms Castrilli: I'm getting to it, Mr Chair — quite frankly, there is no point for us to be here.

The Chair: We've already voted on any process.

Ms Castrilli: There is no purpose for us being here. Therefore, I leave the committee to your good hands.

The Chair: The Liberal Party is leaving. Mrs Marland?

Mrs Marland: Mine was just a technical housekeeping item on that subcommittee report which I discussed with the clerk. In the preamble it says that the subcommittee met on July 3 and 7. We have to define that on the 7th it was a teleconference meeting. That's simply housekeeping.

The Chair: Yes, on July 3 we met in person and July 7 was a teleconference call of the subcommittee.

Are there any other comments? I think we're ready to proceed. At this point in time, we have Minister Leach here. The process is that Mr Leach will have 15 minutes to make opening remarks and then 15 minutes for questions and responses by each of the parties, beginning with the official opposition, then the third party and finally the government. There are no members of the official opposition here.

Mr Kormos: Mr Chair, on a point of order: I'm sure they would have wanted us to use their time.

Mr Gary Fox (Prince Edward-Lennox-South Hastings): There are more of us.

Interjection: You are not a Liberal.

Mr Kormos: I'm sure they would have wanted that. The spirit of the guidelines is that the opposition parties have 30 minutes as compared to 15 minutes for the government.

The Chair: No. What we have is 15 minutes to start with Mr Leach. Mr Leach, would you like to address the committee?

HONOURABLE AL LEACH

Hon Al Leach (Minister of Municipal Affairs and Housing): Thank you, Mr Chairman. I can assure you that I'll be briefer than 15 minutes.

First of all, I would like to thank the members of the committee and thank you for the opportunity to be able to speak with you today.

Let me say at the beginning that I accept the findings of Mr Justice Evans in his report respecting the letter I wrote to Dr Duncan Sinclair on March 17. I made this clear when the report was first issued and I say it again today.

Let me also say that had I known it was inappropriate to write the letter, I would never have done so. It was never my intention to breach any convention of this Legislature or the Members' Integrity Act.

In writing the letter, I was representing the concerns and interests of my constituents in health care in their community. I was careful to limit my comments to process. I did not comment on or attempt to influence the fate of the hospitals in St George-St David.

Nevertheless, in spite of my good intentions, the commissioner ruled that I did breach the Members' Integrity Act.

It might be appropriate at this time for me to read the text of my letter into the record:

"Dear Dr Sinclair:

"I am writing to you on behalf of the Wellesley Central Hospital and Women's College Hospital, who as you know have recently entered into an alliance, to request that you extend the deadline for submissions on your restructuring recommendations from 30 days to 60 days.

"The alliance hospitals are anxious to have sufficient time to prepare a submission that will highlight cost savings and other efficiencies while ensuring that the commission is aware of specific programs such as those that focus on HIV/AIDS patients and programs for immigrants and the homeless that are respectful of the unique needs of these groups and involve them in a meaningful way, since these communities have not always been well served by our health care institutions.

"With the 30-day deadline including the March break and the Easter holidays, more time is needed for these two hospitals to make their written comments to the commission.

"I am informed that hospitals in Thunder Bay were given an extension due to the Christmas holidays and would urge you to use this precedent to extend the deadline in Toronto.

"Sincerely,

"Al Leach,

"MPP St George-St David"

By way of explanation, after the commission issued its report, it provided a 30-day period in which any interested party could make submissions. Due to the timing of the report, however, the 30 days included the spring break and the Easter holiday.

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Representatives of the Wellesley Hospital came to see me. They told me they were seriously concerned that they would not be able to respond adequately in that time period. As I stated in my letter, they were concerned that the 30 days included two holidays and they also knew that an extension had been given to a hospital in Thunder Bay when it faced similar circumstances. So in my letter I asked on behalf of the hospital for an extension to the 30-day time period for submissions.

I think in fairness I should also point out that in sending my letter I did what many other members of this Legislature also did in writing to the commission. I believe that they too were attempting to assist their constituents in an important issue.

I will be frank: I found it very, very difficult to hear the many, many representations from the people in my riding and not be able to take a more active interest in their concerns. I honestly believed that by commenting on the matter of process and not commenting on the ultimate decision, I was able to discharge my responsibilities to the people of St George-St David while respecting the independence of the commission.

As it turns out, in the view of the Integrity Commissioner I was in error and I accept that, but I cannot help asking myself if in setting rules such as these we've gone too far in limiting the ability of ministers to properly represent their constituents.

I can tell you that when I first entered the civil service back in the 1950s there was an expectation that members of the cabinet did forfeit certain freedoms of their ability to represent interests of their constituents. As a matter of fact, it is my recollection that in those days it was customary to seek the approval of your riding before you could accept an appointment into cabinet.

But things have changed, and I believe that public expectations about how they are able to be served by their members have risen. I can tell you, in my experience my constituents expect me to be every bit as much an advocate for them as if I did not serve in the cabinet. Notions of what is and what is not proper change with the times, but we in this Legislature are responsible for setting our own rules and I believe that it is important that we shape them consciously.

Now I am not suggesting, nor even attempting to suggest, that I know what the answer is as to where the line should be drawn. I am not even suggesting that I am certain that the line is now drawn in the wrong place. But I am suggesting that it is necessary for us to consider this issue, because if it is a problem now, it's only going to get worse. It's going to get much worse.

In the next Legislature there will only be 103 members and some 40 of them will be ministers or parliamentary assistants; that's if the current trend continues. If that is so, roughly 40% of the population will have one level of advocacy from their member and 60% will have another. I don't think the public will be well served by two levels of conduct.

Simply put, before we are ever members of cabinet or before we become parliamentary assistants, we are members of the Legislature and as such we are representatives of our constituents. They are the people who put us there. They are the people we represent, and we should all of us have an equal opportunity to properly represent them. Thank you.

The Chair: Thank you, Minister Leach. Do you care to make any other comments?

Hon Mr Leach: No.

The Chair: Okay. Thank you very much. Members from the third party?

Mr Silipo: We obviously are here and we intend to stay and go through the process. We wish that the government members had taken this process more seriously and had allowed us to do the work properly, but we agreed, as I believe the Liberal members agreed, to the committee dealing with this when the motion was in the House and we all understood that the government

members had a majority and that in fact the process would flow according to whatever the majority wished to do. We regret that they have chosen to shut down part of the process but we think it's still important that we be here to ask the questions, rather than be outside looking in.

Minister, I've got a couple of questions to ask you and then my colleague Mr Kormos does as well. I want to start from the that point you've made a lot of in your presentation this morning and then go back from there. It may surprise you that certainly I for one have a lot of sympathy for the point you're making, and this is the point I wanted to also try and get across to the government members, that when we say we're not here to do a lynching, we're serious about trying to get something useful out of this process. One of the things we hope we can get out of this process is in fact what is the status of the rules as they apply to ministers and as they apply to backbench government and opposition members.

Having been in cabinet, I understand the situation you describe when you talk about the limitations you have once you're a member of the cabinet. All of a sudden, things you can do as a backbench MPP you no longer can do. I would be the first to say that's an area that we need at some point to turn our minds to, and I hope we can do it in a way that's useful and in a way that doesn't simply do it from the perspective of government versus opposition or opposition versus government, but does it really from the perspective of understanding that, quite frankly, where you sit today I can sit tomorrow and vice versa. That's been the history of the Parliament of Ontario and may very well continue to be the history, and I think we all have to understand that indeed our first reason for being here is to represent our constituents.

That having been said, I still am troubled I guess a little bit by the tone you have taken to all of this, which is that somehow what you've done — let me put it this way: I get the impression that what you're saying is, "This is something that maybe the rules are set up in this way, but really I didn't do anything wrong." That's the attitude I hear from you.

What troubles me about that is that there seems to be in that attitude a refusal to accept the rules as they are. You may not like the rules, but they're the rules that you knew or should have known were there when you took the job as minister. They're certainly the rules your leader, Mike Harris, espoused when he was in opposition. All of a sudden he and you seem to be saying, "Sorry, the rules here don't quite suit the situation and we're not quite comfortable with the rules so we're just going to sort of pretend almost that this didn't happen, or we're not going to take it as seriously as that."

Having said that, I go on to say, as my colleague Mr Kormos said, I don't think this is the most serious breach there ever has been and I don't want to portray this as that. But it is, in your case, an indication of at least a third instance where your conduct as a minister has been found to be wanting: here a clear breach of the integrity act; earlier, the other two instances, one in terms of a prima facie contempt of the Legislature and your admonishment in the earlier case from the commissioner in terms of how you and particularly your political staffer

dealt with a situation in which there was communication between him and a member of the legal profession.

What I'm getting at is this, Minister — I want to put the question to you in this way — whatever you may think about the rules, are you at least prepared to accept that you have breached the rules, certainly in this case, and that has some consequences and needs to have some consequences? Otherwise, if we simply say we don't like the rules, then we can simply walk away from whatever the consequences are and then you're just sort of redesigning the rules as you go along. Let me just ask you that. Are you prepared to accept that whether you believe the rules are tougher than they should be, that they shouldn't exist in this way, you have in this case broken the rules as they are set out?

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Hon Mr Leach: I think I said that very clearly. I said at the time the commissioner presented his report that I accepted his decision. He found that I was in breach of the integrity act and I accept that. I was in error. I thought I had the right to write a letter with respect to process because I was of the opinion that this was not a quasi-judicial body. He has indicated that's not the case and I accept that. I agree that if that is the case, then I indeed am in breach of the integrity report. I've accepted that I was in error.

Mr Silipo: I'm happy to at least hear you say that.

Hon Mr Leach: I've said it repeatedly since the tabling of this report.

Mr Silipo: Throughout this whole process, Minister, I've never heard you say that you were sorry this happened, which you did on an earlier occasion, at the very least. The tone with which you've chosen to defend yourself is very much along the lines of the spin that my friend Mr Kormos described earlier, which is to just latch on to this issue of penalty and say, "Since the commissioner has found that no penalty should be imposed, therefore this is not a big deal." That's the attitude I've seen, and the reason that we're here is in part for you to be able to clarify that.

Let me ask you about this question of penalty. You were here for some of the discussion that happened earlier on this morning and you certainly know about this issue because it's a point that we made in the Legislature when the issue rose. In fact, it was my colleague Mr Kormos who was the first to say, "Hey, what about the legislation and what actually is in the legislation?" I want to give him credit for that. Then we subsequently followed up on that.

I want to hear your understanding of subsection 34(1). In your opinion, when the commissioner says, "no penalty be imposed," do you take that to mean that he has the power included in that to determine — or to recommend, because he can't determine — what should happen with respect to your membership in cabinet?

Hon Mr Leach: He certainly has the authority to affect my role as a sitting member, as an MPP, up to the point of asking you to resign your seat. Whether he has the authority to comment on my role as a cabinet minister I think is irrelevant, because that's an issue that would rest between the Premier and myself.

Let's assume for the sake of discussion that he doesn't have any authority with respect to a position cabinet. That's a decision, then, that would ultimately rest with the Premier. As the Premier stated at the time, he did not give me an opportunity to resign. He stated at the beginning: "I do not want a resignation. I accept the recommendation of the Integrity Commissioner in this case and there will be no penalties."

Mr Silipo: But that's the key issue, Minister, and that is that the Premier, in coming to that conclusion, at least in whatever he has said publicly to us in the Legislature and elsewhere, based his conclusion on the recommendation of the commissioner in the sense that he took the recommendation of the commissioner that no penalty be imposed to also include that the commissioner was not recommending any penalty with respect to your membership in cabinet.

Are you at least now — because you seem to be saying this in your answer and I want to be absolutely clear — acknowledging that the question of whether you ought to remain in cabinet or not, in light of this incident and in light of previous incidents, is not an issue for the commissioner to determine but is an issue for the Premier to determine?

Hon Mr Leach: I believe that's the case. I believe that in any cabinet with any government, who is in cabinet and who is out of cabinet is solely the discretion of the Premier and nobody else.

Mr Silipo: So when the Premier says, "I'm following the commissioner's report and accepting the report," he's accepting it only with respect to the conduct. He's not accepting it with respect to saying, "It's up to the commissioner to recommend whether I should fire Mr Leach or not." That's up to him to determine. Would you agree with that?

Hon Mr Leach: What's behind the motives and the comments of the Premier is not something I can comment on. When I spoke to the Premier, he said, "I don't want any resignation. I'm accepting the report of the Integrity Commissioner," and that was it.

The Chair: You have six minutes, Mr Kormos.

Mr Kormos: I told you that you should have let me use the Liberals' time.

This is very good, Mr Leach. Your comments today were wonderful. The passage of a mere couple of weeks has converted this from a case of merely getting caught as a result of an error in judgement in good faith to becoming a crusader for more modern and liberal standards for cabinet ministers so that they can reconcile the position of cabinet minister with MPP. It is very good stuff, and I'm envious of the people who drafted this. If this person over here is the draftsperson, I compliment her.

But it's interesting. Again, I said earlier this isn't the biggest deal in the world, which is why it's unfortunate we can't hear from the chair of the commission you wrote to to find out whether he or she trembled in their boots, quaked at the sight of your signature on a letter, or whether they simply threw it in the pile with the rest of the letters they get, knowing that you, along with other MPPs, write these letters simply so you can say you wrote them, to make your constituents happy, not with

any real anticipation of their having any significant impact. That's how it works. You want to be able to cc; you want to be able to photocopy these and distribute them with your newsletter to show that you wrote the letter, not confident that it will have had any impact whatsoever.

Did you make any inquiries of your staff about whether you should write this as a minister or from your constituency office?

Hon Mr Leach: Whenever a minister signs a letter or whenever a member signs a letter, the buck stops with the guy who signed the letter. I signed the letter and I accept full responsibility for the letter. Whether I talked to anybody or not is irrelevant.

Mr Kormos: See, because we're starting with the premise of good faith — Mr Clement agrees with me about that finding — and a mere error in judgement. I talked about two forms of good faith. I understand the difficulty ministers have. Heck, you can't do workers' comp advocacy as a minister, right? That's a real handicap, because in a whole of our const offices we do a lot of workers' comp. There are other issues. You can't represent people before SARB, right?

Hon Mr Leach: Any judicial body or quasi-judicial body.

Mr Kormos: But if you were only an MPP, you could represent people before SARB.

Hon Mr Leach: I'm not sure if you can or not. You probably could.

Mr Kormos: And you could appear before the WCAT.

Hon Mr Leach: As an MPP?

Mr Kormos: Yes.

Hon Mr Leach: I know as a cabinet minister you can't. I've never been just a backbencher.

Mr Kormos: I understand that. I have been, and it's an onerous responsibility to appear in front of these tribunals on behalf of constituents. But you seem eager to do it and not to be hampered by what may sometimes be artificial rules for cabinet ministers. Is that a fair observation?

Hon Mr Leach: I'm sorry. Could you repeat that?

Mr Kormos: You seem eager to be able to do some of this advocacy that MPPs are allowed to do and that cabinet ministers are not.

Hon Mr Leach: I think every member of Parliament wants to represent his constituents to the very best of his ability and provide them whatever assistance and service he can. That's what they elected him to do. Often there are conflicts between the role of an MPP and a cabinet minister, and that's certainly accepted. It doesn't make it any easier.

Mr Kormos: But it seems you have made a decision to use your const office letterhead as compared to your minister's letterhead.

Hon Mr Leach: I was writing as an MPP.

Mr Kormos: Yes, but you made that decision, I trust, because you knew there were some sensitivities involved here.

Hon Mr Leach: As I mentioned, I was writing to the commission on a matter of process and I felt that writing a letter with respect to process would be acceptable. I certainly would never have written a letter that tried to

influence the decision of the commission as to whether to keep the hospital open or closed. That certainly would have been inappropriate and I recognized that, but as a matter of process, requesting an extension of 30 days in an area where that extension had been granted in other areas, I didn't feel that was inappropriate.

Mr Kormos: I understand that, but you also didn't feel, because of the nature of the body you were writing to, that it would be appropriate to write on your cabinet ministry letterhead.

Hon Mr Leach: No, because it wasn't something that concerned my portfolio. The hospital restructuring commission has nothing to do with my portfolio and it would be totally inappropriate for me to write under my portfolio letterhead. I was writing on behalf of my constituents in St George-St David, so it was appropriate for me to write that letter using my constituency letterhead.

Mr Kormos: As a mere MPP.

Hon Mr Leach: As an MPP.

Mr Kormos: It seems then you would have gone further than merely register a protest.

The Chair: The third party's time is up.

1140

Mrs Marland: This is not a simple matter. It's a very serious matter and I think the statement made this morning by Minister Leach confirms that. I also think we've seen a tremendously petulant demonstration here this morning by the official opposition. The official opposition is the reason we're here. It was the health critic for the official opposition who brought this complaint to the Integrity Commissioner in the first place. It was the health critic whose complaint, being reviewed by Justice Gregory Evans, had the fallout of the report that was then referred by the Legislative Assembly to this committee, and now they've walked out. They've picked up their marbles to go home and play, I would suggest, because they didn't get all their own game, they didn't get all their own rules. That's how it works, and we understand that.

I appreciated the comments of Mr Silipo in terms of why they're staying to do their job as best they can in opposition. We all are here with different responsibilities. You are here as conscientious members of the third party, we are here as members of the government, and we're all trying to do our own job and assume that responsibility with sincerity and commitment. I'm absolutely blown away by the petulant behaviour of Mrs Papatello, Ms Castrilli and Mr Curling walking out of this meeting at the beginning of its two-day hearing.

There has been some comment made questioning the problem of penalty. It's very interesting, because if you read back in some of the annual reports of the Office of the Integrity Commissioner, which I have done — in fact I have read some of the reports when it wasn't the Office of the Integrity Commissioner but the Office of the Conflict of Interest Commissioner, which was the name under the previous act; we now have a new act, with possibly a better name but really the same purpose. When you read some of the decisions and some of those matters that have been referred to that commissioner, you will

find that there have been instances where a penalty has been recommended but none has taken place.

The power of the Integrity Commissioner in itself is quite interesting, because although he may recommend a penalty be imposed, there is no compelling requirement, it seems to me, in the act for someone or some group to impose a penalty, even if he recommends it.

I really want to refer to the Premier's statement in the Legislature on June 25 because I think this brings us to the dilemma of Minister Leach before us this morning, and whether or not it's from the opposition's perspective — frankly I don't find the opposition's comments so far this morning to be unsympathetic, knowing that this situation before us could apply to any member in this House, not only a minister of the crown, I may add, but also a backbencher acting beyond the jurisdiction. Even as a backbencher in the third party there are limitations as to which bodies we may canvass and make representation to. To the member opposite who is hastily shaking his head in disagreement with me, that's fine, he will have an opportunity to speak later.

The point is this: If we are careful, there are certain assumptions we know as a given and there are certain assumptions we don't know, and we simply pick up the telephone and call the Integrity Commissioner's office.

I can give you a perfect example in my own riding where for eight or nine months I opposed the expansion of a Petro-Canada plant in my riding that was going to have a potential problem with certain environmental emissions. I did that for nine months and then, bang, on June 8, 1995, we were suddenly the government. I still have the same concerns but now I'm a member of the government, whose own ministry is about to issue a certificate of approval for the expansion of that plant; in fact the previous Bob Rae NDP government was also about to issue their approval.

I asked His Honour Justice Gregory Evans if it was appropriate for me to continue, as a backbencher in the government, the same representation of my constituents. In that case I got his opinion in the affirmative and I proceeded.

I think the point Minister Leach brings to us this morning about the need for some further clarification is important to all of us. In the Premier's statement in the House on June 25, as you will recall, he told us there were two other ministers who had made representation in some form to the Health Services Restructuring Commission.

The Premier said, "None of the ministers believed the commission was a quasi-judicial body." The Premier also said: "After setting up the arm's-length commission, the government delegated to it the government's authority to make restructuring decisions. It was our view that this mandate did not involve the adjudication of legal rights." I believe that's a very important statement our Premier made. Then he went on to say, "However, in his report today, the Integrity Commissioner wrote that he considers the Health Services Restructuring Commission not only to be independent but also to be a quasi-judicial body."

The fact is, we have two different opinions here. We have not only Minister Leach, but we have other minis-

ters also being under the assumption that yes, there are clearly quasi-judicial bodies but they did not consider this to be one.

I simply will close with something I think is quite ironic, also referred to in the Premier's statement. He went on to say: "For example, the Integrity Commissioner himself says the minister could have personally consulted the Minister of Health on restructuring matters, instead of consulting the independent commission. Until now, we had been of the belief that that was inappropriate."

Mr Silipo: You better read the next sentence.

Mrs Marland: I will read the next sentence, because the Premier is demonstrating his concern here. In the next sentence the Premier is saying: "I have therefore asked the Attorney General to meet with the Office of the Integrity Commissioner to clarify these issues for the benefit of all ministers and all members so that all of us know how and under what circumstances we can represent the interests of the constituents who elected us." Then in the meantime the Premier is suggesting that all members refrain from writing to the Health Services Restructuring Commission.

It has to be somewhat ironic for all of us that this is the situation. I think that is exactly what Minister Leach is saying this morning. He now has an opinion, as do we all. We have a report from the Integrity Commissioner and we frankly have some more homework to do.

Minister Leach, I appreciate the fact that you have said this morning that you have accepted that you were in error. I think frankly any member could be in the same error regardless of where they sit in the House.

1150

Mr Baird: Thank you, Mr Leach, for coming in. Do you get CNN on your television back at your office?

Hon Mr Leach: I'm sorry?

Mr Baird: Do you get the Cable News Network on the television in your office?

Hon Mr Leach: Damned if I know.

Mr Baird: It's on the basic cable package. I think some of the members of the Liberal Party are confused with what we're here to do. They've been watching the Senate investigations on CNN too much. We're not here to conduct a US Senate-style inquisitorial investigation into this process; we're here to consider the Integrity Commissioner's report. We do it in a parliamentary system.

I read directly out of the integrity act, page 40, subsection (4): "Despite section 46 of the Legislative Assembly Act, the assembly does not have power to inquire further into the contravention, to impose a penalty if the commissioner recommended that none be imposed, or to impose a penalty other than the one recommended."

One of my colleagues in the third party mentioned that we're acting as a jury. He said, "The jury's stacked in your favour." We're not a jury. Let's be clear about that right from the beginning. This is not a jury. We have an Integrity Commissioner appointed by the Legislative Assembly to act independently of all of us as elected officials. I think it's extremely important to get that on the record, that we're not here to conduct a trial or a US Senate-style inquisition that some of our colleagues in the

official opposition somehow would like to pretend we are. That's not our job here today.

I just have a quick question to you. Was your letter a secret you sent to one person? Did you want to hide the fact that you were writing that letter?

Hon Mr Leach: No, I think I sent 600 of them.

Mr Baird: So if you thought or had any belief that what you were doing would be wrong, you wouldn't want to make 600 copies of it and send them all over your riding.

Hon Mr Leach: No, I probably would have held it down to maybe 500.

Mr Steve Gilchrist (Scarborough East): Thank you, Minister. I appreciate your coming before us. I was going to make a comment about exactly the point Mr Baird has made, but let me take a different tack. Beneath all the flowery rhetoric at the outset of the third party's comments to you today, the premise we heard in the opening hour and a half was very much to the contrary, that they are looking for a witchhunt, that they are looking for something that would unduly vilify you.

I'm very confused here, as I read the act, because there is a section that deals with the activities that members of the executive council are prohibited from participating in. One hundred per cent of those sections deal with financial matters, that you're constrained from holding certain assets and you must place all your assets in a trust. Section 4 in no way singles out members of cabinet.

It's fair for Mr Silipo to say he's been in your shoes. We have not. We're driven and guided by the words in the act. Let me just read them to you, "A member of the assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest."

I'm not going to suggest that Judge Evans was incorrect in his ruling, but I'm at a loss to understand where in those words there is something that would lead you to know that there was a different standard that guides your behaviour. I wonder if you could give us some sort of counsel.

It goes on in the next section to say that things should be in accordance with Ontario parliamentary convention. The judge's own comments refer to work done by Senator Eugene Forsey at the federal level. That's hardly relevant to Ontario parliamentary convention. Is there some sort of handbook that members of the cabinet, the executive council, are given that give you different rules than what's laid out in this act that supposedly governs us all?

Hon Mr Leach: If there is, I didn't get my copy.

Mr Gilchrist: I would like to conclude my comments by saying that I thought the premise behind the assembly's request for us to meet was to consider the full import of Judge Evans's rulings, not to single out, and certainly not, as my colleague Mr Baird has pointed out, to deal with anything to do with any possible penalty, because we are absolutely constrained from even dealing with that subject. We cannot even talk about it. The first hour and a half was nothing more than histrionics. What we can talk about is whether it is fair that we have this double standard, particularly when it's not even in the act

itself. So I hope that in this afternoon's session and next week's we can deal precisely with that.

The Chair: Mr Clement?

Mr Clement: I'll pass for now. I think Mr Leach wants to say something.

Hon Mr Leach: I just want to point out that I do take this matter extremely seriously. The commissioner, in my view, is open to interpret the act as he sees fit. He's the commissioner. He has made a ruling. I felt I was in a position to do something; he has determined I wasn't. I accept his ruling. I'm not quarrelling with his ruling. That's what we put him in that office to do.

I don't want anyone in this room to be under the impression that I have any quarrel with the commissioner or that I don't agree with the commissioner. It's his act. He says, in his interpretation of his act, that I was in breach of that act, and I accept that. I didn't think the actions I was taking would be, but he has determined they are. I fully accept his judgement on that.

He also indicated, and I will repeat, that in his view it was an inadvertent error, and it was, and he recommended that no penalty be imposed on me as an MPP. With respect to my position as a cabinet minister, that's something between the Premier and myself, and only the Premier has the authority, to the best of my knowledge, to determine who is in cabinet and who is not.

The Chair: Thank you, Minister Leach, for being here today. I appreciate your attendance.

On that note, we'll adjourn till 2 pm.

The committee recessed from 1156 to 1406.

The Chair: The next stage of the proceedings is that the government will make a 30-minute presentation, followed by the NDP.

Mr Clement: As a way of starting out, I did take the liberty to collect my thoughts into a motion which would help structure the debate and get you, as the Chair of the committee, and us to resolve this in the time allotted by the Legislature.

I'd like to read this motion at this time as a way to start things off. We'd like to move, as the government, that the report of the committee be as follows:

"On June 25, 1997, the Integrity Commissioner for the province of Ontario issued his report in regard to a complaint brought by the member for York South in regard to the Minister of Municipal Affairs and Housing with respect to a letter dated March 17, 1997, from that minister to Dr Duncan Sinclair, chair of the Health Services Restructuring Commission.

"In that report, the Integrity Commissioner found that the Minister of Municipal Affairs and Housing contravened the Members' Integrity Act by writing the aforementioned letter.

"The commissioner further found that the action was 'made in good faith in the mistaken belief that he was entitled to do so.' He recommended that no penalty be imposed.

"The Premier and the two opposition parties made statements in the Legislature on June 25. The report was also the subject of 14 questions and responses in question period on June 25 and 26.

"The Legislature was convened on July 3, 1997, at which time the matter was further debated by all parties

and thereby referred to this committee by vote of the Legislature.

"Based on the material before it and its deliberations, the committee recommends that the Legislature adopt the June 25, 1997, report of the Integrity Commissioner of Ontario."

I'd like to move that at this time.

The Chair: Is there any discussion?

Mr Silipo: Can we get a copy of that?

Mr Clement: Yes. Maybe by way of explanation to the assembled opposition here before us today, again this is —

Mr Silipo: You're allowed to say who we are.

Mr Clement: The third party.

Mrs Marland: Here with us today.

Mr Clement: Here with us today.

Mrs Marland: Not before us.

Mr Clement: The purpose of this motion is to provide a framework for the future discussion. As you know, based on the subcommittee report, we go into rounds of discussion among the opposition parties that are present and the government on what they feel should be the intent of this committee in dealing with the report as referred to it by the Legislature. We as the government thought it appropriate to provide some sort of framework for that discussion.

Clearly it's my expectation that the opposition might have a few choice words to say about how they feel about that motion. That is all well and good. That is a robust debate that can occur here, but at least there's a framework for that discussion to take place. The purpose of the motion is to provide that framework.

As the motion reads, what we propose is that this committee adopt and accept the report of the Integrity Commissioner of Ontario. We agree with the report. We accept the report. We have no reason to feel that the report was in some way invalid or inconclusive. The report made it very clear, as others have mentioned here today, about what the Integrity Commissioner felt was a contravention or breach of the act, and indeed what the sanctions should be. In his recommendation there should be no further penalty. We accept that part of the report as well as its determination that the Health Services Restructuring Commission was in fact a quasi-judicial body and, in so doing, it found the member for St George-St David to be in contravention of the Members' Integrity Act.

It basically ties up into a bow reference to what has occurred in the Legislature by way of debate as well as the report itself, as well as our determination hopefully, if this motion is adopted by this committee, that we have reviewed the report and we accept its findings and that can be then referred back to the Legislature and back to the Integrity Commissioner as the deliberations of this committee.

The Chair: Copies of this motion are being distributed at this time. Are there any further comments?

Mr Clement: I think we've got a little more that we can say with our round and I would definitely cede the floor to Mr Baird if he's in order.

The Chair: Well, we're dealing with a motion here, so is it the wish of the committee to deal with the motion before we go to our rounds?

Mr Kormos: Correct, Chair, of course.

The Chair: So who wishes to discuss this motion?

Mr Silipo: Just on a point of order, Chair: I understood, and maybe you can correct me if I'm wrong, from the procedures that we adopted this morning that we would deal with motions at the end of the second day, or was that just dealing with motions that had not yet been dealt with by that time?

Mr Clement: That's my understanding, Mr Chair.

The Chair: The way I view it, in the subcommittee report it was motions that had been moved. That's paragraph 7: "All motions moved will be deemed to have been moved, and the Chair shall put all questions necessary to dispose of the matter." Now we have a motion before us. Whether you wish to deal with it at this point in time or you wish to deal with it later on is really Mr Clement's call. It's his motion.

Mr Clement: The sooner the better. I don't want to truncate debate. This would in no way truncate the opportunity for the opposition to put their views forward, but if you, Mr Chair, are willing to allow this to stand and be discussed first, certainly we would have no objection to disposing of this motion first, getting it on the record one way or the other.

The Chair: Any comments, Mr Silipo?

Mr Silipo: I'm not objecting to the motion being in front of us. I just thought that under the way we were going to proceed we would deal with debate on either the motion or any other issues that members want to debate, keeping in mind that we still have at least — I guess we have one person still to hear from next week, the Attorney General.

The Chair: He has been invited but we haven't received a response at this date.

Mr Silipo: Right, but he presumably is not coming this afternoon, so he can only come next week, if he's going to come, right?

The Chair: That's a fair comment.

Mr Silipo: So it seems to me to be premature to be dealing with voting on motions. I don't have any problem with debating motions or anybody putting forward motions and we deal with that in the ongoing discussion that we have and then come to some conclusions at the end of the process. That would be my suggestion about how best to deal with it, but I'm not speaking certainly against the idea of the motion being here. I think we can deal with the content of the motion. We'll have some things to say on that, but I thought it would be a bit odd if we were going to proceed to vote on this motion.

The Chair: I guess there are two ways of dealing with this. The purpose of the opening statement is to deal with what we have before us. If the motion is dealt with now, this is a substantive motion in terms of the integrity report, or we can have our opening statements and then deal with the motion.

I think at one time or another we're going to want to talk about the motion. I wouldn't want to leave it until 5 o'clock on the second day. We won't be able to deal with it. I throw that out as a suggestion. It's still Mr Clement's motion, and if he wishes it to be dealt with now, it's his discretion to call that, and I will deal with it.

Mr Clement: Again, the purpose of this motion is not to truncate — and I repeat, is not to truncate — the opportunity for either the government side or the opposition side to go through the rounds. I just want to make the point perfectly clear that it was not an attempt to do that.

I am content to have this motion on the record and we can deal with it one of two ways: We can either deal with it now, in which case further motions could also be passed by this committee up until 5 o'clock on July 22, or hold this motion on the table and proceed with the rest of our deliberations today and next week. Either way I'm content. The opposition might want us to deal with this now because then it affords them the opportunity to move other motions as the debate proceeds, so that would probably be in their interest.

Mr Kormos: Chair, on a point of order: I suppose Mr Clement could have provided us with a written copy of the motion by way of a notice of motion; rather he moves a motion. You move a motion and then you've got a motion on the floor and that's the order of business unless there is a procedural technique used to defer the matter.

It seems rather peculiar that the Chair would invite Mr Clement to determine when the motion is going to be dealt with. The motion has been put, it's not just a notice of motion, and again, there would have been nothing wrong with that, but the motion has been put. Mr Clement considers this a timely thing to do, so here we are. The committee has a motion before it. It seems to me that the order I referred to would require that the motion be dealt with.

The Chair: I understand what you're saying, but I put it back to Mr Clement. It's his motion and he has put it back out, saying he's flexible as to when he deals with it. I guess the comment from yourself is that you prefer to deal with it now, Mr Kormos. I don't know what Mr Silipo would like to do.

Mr Kormos: But as I say, here it is. We've got it here and now. Don't move motions unless you want them debated and voted on. You can give notice of motion, you can make reference to a motion that you anticipate filing. Mr Clement talks about wanting to create some scope or some guidelines, some parameters maybe, for the discussion. What he has done is provided us with a motion. God bless. It's his right to move a motion. I'm not going to interfere with that.

The Chair: Mr Clement, the motion is in front of us. Perhaps we can deal with it now.

Mr Clement: That's fine, Mr Chair. I'd be happy to.

The Chair: Is there any discussion on this motion?

Mr Clement: I've already said what I wanted to say, Mr Chair. It's part of the record.

Mr Baird: I would just very briefly speak to the motion put forward by the member for Brampton South. I would like at the outset to put some comments on the record — I alluded to them this morning — as to the mandate of this committee. We're not a US Senate committee. We're not here to conduct an investigation. I think some of the members who called for this inquiry who aren't here, those members from the Liberal Party who walked out this morning, perhaps misunderstood from watching too much CNN. This is not a US Senate

investigation. We're not here to investigate the actions of the minister.

That role is deemed to be so important in our parliamentary system of government that the Ontario Legislature, I believe with all-party support, has passed a Members' Integrity Act that mandates that role to the Integrity Commissioner in the person of Judge Gregory Evans. Judge Evans is well respected, I think on all sides of the House and throughout Ontario, as someone beyond reproach.

1420

The member for Welland-Thorold mentioned this morning to the minister that we were somehow sitting as a jury, in his judgement, and because it's a jury with a majority of government caucus members on it, we had a jury that would render a favourable verdict.

It's not this committee's place to undertake that investigation. I think it would put us all in an untenable position. That's why we have an Integrity Commissioner, someone, in the person of the Honourable Judge Gregory Evans, to undertake that on our behalf. He has done so. He has looked into the complaint by the member for York South and has rendered a report. That's the report that we as a committee have been asked to consider: the report, not the issue, and not to conduct our own parallel investigation.

I quoted this morning, and I want to put it on the record again because I think it's very germane to the point, page 40, subsection (4): "Despite section 46 of the Legislative Assembly Act, the assembly does not have power to inquire further into the contravention, to impose a penalty if the commissioner recommended that none be imposed, or to impose a penalty other than the one recommended."

We do not have that power. That is not within our mandate, explicitly because the Legislative Assembly — and to be non-partisan, it was the previous Parliament, where our party certainly was a very small minority — I believe unanimously voted for the Members' Integrity Act and gave that job explicitly to someone at arm's length from the political actors in the process. We felt that the public's right to expect high integrity from their elected officials free from conflict of interest should be judged not by a member's peers but rather by someone who is independent and above and beyond the political fray. So it would of course be inappropriate for us to try to conduct or to pretend that it was our mandate to conduct an investigation into this issue.

The process asks us to simply consider and respond to the report. I think it's very important early on in our deliberations to note that the Premier, and the minister when he came this morning, were extremely clear. They take no issue with the report. They fully accept it — not fully accept the spirit with which it was presented, not fully respect its end conclusion; they accept the report entirely, and did so the day that Judge Evans tabled it in the Legislature. The minister did so this morning. I think to his credit he alluded to us this morning that it is Judge Evans's place to undertake the investigation, for him to draw a conclusion, and he fully accepts that conclusion.

Another important point to make in this discussion was the motive. What were the motives of the member that he

undertook in the mistaken belief that he was entitled to write such a letter? I think as we go along year by year, the public rightfully demands higher standards of conduct from its elected officials. It's undoubtedly one of the main reasons why all three political parties supported the introduction and the proclamation of the Members' Integrity Act, because constantly seeking a higher standard from their elected officials, the public demanded very clear and specific guidelines.

I think what we saw through the Health Services Restructuring Commission was a mistaken belief on whether it constituted or did not constitute a quasi-judicial body. The Integrity Commissioner writes in his report that the mistake was "made in good faith in the mistaken belief that he was entitled to do so," and there's a reason for that. The Minister of Municipal Affairs and Housing did not write the commission ordering them to keep or to close a given hospital or to restructure a given hospital in Ontario. What he did was he wrote the letter with respect to the timing of the process. In my community in Ottawa-Carleton the process had already been extended by 18 days, and I understand it had already been extended in Thunder Bay. So he was not seeking in any way to pass judgement on the substance of the committee's deliberations; it was simply a question of process.

Judge Evans has reviewed this situation and has said clearly that the commission was acting as a quasi-judicial body. That decision is one that we can only respect. He is the person we entrusted to make that judgement, and we in the government have no quarrel with that. I mentioned that the Premier and the minister both have fully accepted that.

The Minister of Municipal Affairs and Housing was not trying to further the cause of anyone; he was not trying to push a specific decision on the commission. When he wrote the letter, he distributed it widely within his constituency. If he was out to try to secretly push a given result or a given decision on the commission behind closed doors as a member of the executive council, there would obviously be a good amount of concern on that. He wasn't.

What he did was he simply, on behalf of his constituents in St George-St David, wrote a letter appearing on his constituency letterhead, which was obviously a deliberate choice on his part because it was a constituency issue. He wrote to the commission on behalf of his constituents in terms of a question of process. He then distributed a copy of that letter to more than 600 constituents in his riding of St George-St David. If he thought or was under any belief that what he was doing would be somehow improper or viewed as improper, the man certainly wouldn't have distributed the copy as widely as he did — so widely that obviously the member for York South, Mr Kennedy, came into possession of one of those letters. Obviously the minister was not seeking anything but an extremely public process.

The whole purpose, the whole reason why we have guidelines with respect to quasi-judicial bodies and agencies that operate at arm's length is so a cabinet minister would not make a late-night phone call to the head of a given body and push a certain decision on that

body. What this man did was to write a letter on an issue of process, in good faith, even according to the Integrity Commissioner, to a body that he did not believe to be a quasi-judicial body. It's incredibly important to note that the motive was simply one of process.

Judge Evans has rendered a report, and it causes us all to stand up and take note and to certainly be that much more vigilant as to what is appropriate and is not appropriate for us to do. These are challenges which have come to many governments over the years. Both at the federal and provincial levels over the last 10 years, a good number of ministers have had to grapple with these. That's why we in the Ontario Legislature passed the Members' Integrity Act and set up a process for an independent person acting in a judicious fashion to review the case and determine whether the member was or was not in conflict.

In the United States Senate, they would have hearings for three or four months, televised, and his peers would stand in judgement. In Ontario, our process is to have the Integrity Commissioner, an officer of the Legislative Assembly of Ontario, make that determination. In my judgement, that's the best way of doing it, because it would be far better for that independent person to stand in judgement on a question this serious, and he has done so.

Obviously we'll all have to govern ourselves accordingly, based on the decisions he makes over time. This is one that obviously applies a higher standard, and I think that's one we can certainly welcome. There's nothing wrong about that. It puts a precedent there for us all to stand up and take note of.

But the fundamental motive of the minister was to simply write a letter on process to a body where he was of a mistaken belief, and I think many of us would have been under the mistaken belief.

1430

The Chair: I just want to offer a suggestion. We met this morning, and we may have another witness based on our deliberations this morning: the Attorney General. We did indicate in the report that we would commence the next part of this process by opening statements. It may be prudent that we proceed that way, because other motions may come out and we may be limiting ourselves in terms of the committee being able to deal with other matters. Also, I don't know whether you would want to be dealing with voting on this before you've heard one witness who may come — this is the Attorney General — and heard other motions that may arise therefrom, from the opening statement.

I'm going to make a suggestion, and obviously it will need unanimous consent, before we get too long into this, that any member speaking in the two rounds indicated in paragraph 6 of the amended subcommittee report can move a substantive motion, but further consideration of and decisions on the motions will be postponed until the committee's July 22 meeting. That's what I would put out to the members. If they are interested in that, with unanimous consent we can move to deal with the opening and any other motions that may come forth from that. Is there unanimous consent for that?

Mr Kormos: Wait just a minute, Chair. These guys get 30 minutes of air time before you intervene.

The Chair: I wouldn't say they had 30 minutes of air time. I would say they've had 15 minutes, with respect to Mr Baird speaking.

Mr Kormos: Well, 2:30; that's his speech alone. What gives here? I appreciate the Chair's intervention. So they've used their first 30 minutes. Okay. I can live with that.

The Chair: They haven't used their first 30 minutes, because we've been talking about other matters in terms of that. We have till 5 o'clock today. I'm throwing that out as a suggestion so we can deal with this. That's what gives.

Mr Silipo: That sounds sensible to me. I think it allows us to do the work we need to do and to do it in a proper fashion.

The Chair: Okay. If there's unanimous consent, we'll start off with the government.

Mr Kormos: I've got to listen to him for 30 more minutes?

The Chair: No.

Interjection: That was 15 minutes.

The Chair: That would be a part of your 30 minutes. I would say you have 15 minutes left. You've already been speaking for 15 minutes.

Mr Baird: I would yield to my colleague the member for Brampton South.

The Chair: It's still 30 minutes per party. There are 15 minutes left.

Mr Clement: My point is a relatively minor one in terms of the amount of time, so my colleagues will have an opportunity to add their two cents' worth as well.

Mr Kormos: For what it's worth.

Mr Silipo: Any time you don't use reverts to Kormos, right?

Mr Clement: No. Don't scare me like that.

The issue I wanted to raise was on a close reading of the Members' Integrity Act, because there has been a lot of discussion here already about the fact that the Integrity Commissioner had recommended that there be no penalty, no sanction in this case, but that the Integrity Commissioner, according to the opposition, did not have the choice of making further recommendations as to sanction in terms of the status of the Minister of Municipal Affairs and Housing in cabinet. That has been a central point of the opposition.

I would like to put on the record a close reading of section 34 of the Members' Integrity Act. My colleague Mr Baird made mention of subsection 34(4), which is found in tab 4 of our binders on page 40. He made mention of the fact that the Legislative Assembly could not superimpose or substitute a particular penalty if the commissioner recommended that none be imposed or impose a different penalty other than the one recommended.

What I would like to draw to the attention of members of this committee, however, is the original wording of subsection 34(1), which outlines four potential penalties available to the Integrity Commissioner if there has been a finding of contravention. I find this very interesting. The commissioner could recommend in his or her report,

“(a) that no penalty be imposed;

“(b) that the member be reprimanded;

“(c) that the member’s right to sit and vote in the assembly be suspended for a specified period or until a condition imposed by the commissioner is fulfilled; or

“(d) that the member’s seat be declared vacant.”

So even apart from the issue of the status of Mr Leach in cabinet, even if it were correct that that is outside the purview of the commissioner, the commissioner had four choices available to him upon the determination that the minister contravened the Members’ Integrity Act. Isn’t it interesting that the one he recommended was that no penalty be imposed. He could have recommended something as draconian as that the seat be declared vacant.

Clearly, even Mr Kormos’s comments have been that this is a bit of a tempest in a teapot and that that would not be either recommended or the obvious solution to this matter. But I find it very interesting that he could have reprimanded the minister —

Mr Baird: As he’s done in the past.

Mr Clement: — as he has done in the past, my colleague reminds me. I believe the current Speaker of the Legislature was reprimanded in his day. He could have reprimanded the member, and he did not do so. He recommended that no penalty be imposed.

Interjection: There’s reprimand for you — thunder.

Mr Clement: Maybe he is leaving it to higher forces to invoke a penalty, I don’t know. But the wording of the commissioner was, after discussing the fact that there was an error that was made in good faith, “Accordingly” — and the word “accordingly” is in there — “...no penalty be imposed,” “accordingly” relating to the fact that the mistake was made in good faith.

The commissioner, being a good commissioner, turned his mind to sanctions, could have sanctioned by declaring the seat vacant, could have sanctioned by declaring that the member could not sit in the House for a specified period of time, could have sanctioned that the member be reprimanded, which he has done in the past, and rejected all of those things and instead recommended that no penalty be imposed.

I know the members opposite would not like to mislead and have not done so in this case, but I think it is important for members to understand that the range of penalties available to the commissioner stretched far and away over and beyond no penalty or kicked out of cabinet, no penalty or kicked out of his seat. He could have reprimanded the minister. He chose not to do so. I find it highly significant that that was the determination made, based on the evidence which the commissioner himself said was satisfactory, that no further inquiry need be done, and he decided to represent to us and to suggest to us that no penalty be imposed. That is something that is worthwhile to have on the record.

Thus ends my remarks.

1440

Mrs Marland: I think since the entire genesis of the referral of this matter by the health critic for the official opposition, that opposition which again we recognize has chosen to absent themselves from this hearing which they had requested — the genesis is the matter of a letter going to the Health Services Restructuring Commission.

It’s very interesting when you read the Health Services Restructuring Commission’s own guidelines on who can contact them and under what circumstances. In item 2 of their guidelines, which is exhibit 2B under our tab 1, it says: “The commission, on written application or on its own initiative” — so here we are — “may consider an extension of the time within which submissions may be made. If any hospital or any other person or organization seeks such an extension, the application for such extension shall be submitted to the commission within 10 days” etc.

As we sit here discussing the Integrity Commissioner’s report, personally I don’t find it necessary to rehash his rationale because, as I said this morning, I actually find his rationale is very clearly set out. But I think since we are trying to say, “How will other people look at this?” people other than potentially biased government members, it’s been suggested — speaking for myself, I’m not a biased government member. I try to be a very straightforward government member.

When I see this in the guidelines of the Health Services Restructuring Commission itself, it says “any person” may ask them for an extension of time. In their paragraph 3, again it says “any person.” It doesn’t say “any person with the exception of a cabinet minister,” or “any person with the exception of a backbencher.” It doesn’t have any exceptions. They are saying, “Any person can ask us for an extension of time.” We have, apparently, examples of where such exemptions have been granted. Mr Baird referred to a couple of examples a few minutes ago. That’s one thing that I think is important for us to consider when we look at whether or not we support and agree with Commissioner Gregory Evans’s findings. So those are the guidelines of the Health Services Restructuring Commission.

I also would like to take you, under tab 4, to the Members’ Integrity Act itself and take you to page 8. That’s funny; I guess there isn’t a page 7.

Mr Silipo: It’s in French.

Mrs Marland: Oh, that’s why. Thank you. We have only the English before us. Okay, the page that’s identified as number 8, item 4: “A member of the assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member’s private interest or improperly to further another person’s private interest.”

I don’t think there is any person who understands what has transpired with this whole issue who could for a moment consider that this is a private interest. The matter that Minister Leach was concerned enough about on behalf of his constituents was not a private interest. It wasn’t in fact a private interest of one constituent and it certainly wasn’t a private interest of Al Leach, MPP. It was and is a public interest. It’s a public interest whether hospitals close, remain open or partially close. Whatever that issue is in terms of health care, it is a public issue and it’s certainly not a private interest.

The paragraph that follows as item 5 of the Members’ Integrity Act is very important because this is one that is a benchmark, I respectfully suggest, for every one of us sitting in this committee. It says: “Activities on behalf of constituents. This act does not prohibit the activities in

which members of the assembly normally engage on behalf of constituents in accordance with Ontario parliamentary convention."

I know that what is being said here is that perhaps in some circumstances, with some bodies, cabinet ministers have to be excepted from that item 5, but until we are clear what those exceptions must be, I don't think we can arbitrarily jump in and say, "Ha, ha, we've got you; we've got you on this one," although the common understanding is that X body wasn't a quasi-judicial body, either this one that we're talking about, the Health Services Restructuring Commission, or maybe any other of the 843 agencies, boards and commissions of this province.

I go back to the statement made by the Premier. Frankly, I appreciate the Premier's judgement in referring this matter to the Attorney General and to the Integrity Commissioner himself to resolve once and for all, for all of us, where we are allowed to go, as it refers to in section 5 of the integrity act, in terms of engaging in activities on behalf of our constituents in accordance with Ontario parliamentary convention.

I certainly think we all want to serve our constituents as well as we possibly can to the utmost of our ability and if there are impediments to that, then we must all know. I would suggest again that we must all know within the parameters of those roles and responsibilities that we have in this place.

The Chair: Mr Kormos, opening statement for the third party.

Mr Kormos: I was all prepped up to respond to the arguments put on the record on behalf of that motion by Mr Clement and Mr Baird. What's kind of interesting — here we are. It's 2:45, give or take a couple of minutes, and this is the first day of two days allotted to the committee. The government is already using its majority. They conducted themselves in concert — no surprise — to defeat the invitation for the Minister of Health, for the commissioner and for the head of the hospital restructuring committee. They've got the Attorney General coming, to what end I don't know. I'm not all excited about the prospect of him coming because I'm not sure he's going to be able to tell us much more than what the committee doesn't know already.

We had Mr Leach here this morning making an opening statement, I believe allotted 15 minutes, then 15 minutes for questions put to him by Mr Silipo and myself and then 10 minutes of monologue by Mrs Marland and then five minutes of questions.

Mr Gilchrist: She wanted to pay tribute. You taught us well.

Mr Kormos: I understand. She wasn't getting air time. It's tough in the big city getting press. I understand. Unfortunately, it was this morning's audience, which as we all know, for the legislative broadcast, is nowhere near as strong as the afternoon audience. In the mornings people are busy around their homes getting things done.

What I find remarkable, though, is the solemnity and seriousness with which this is being undertaken by darn near everybody. It's like young boys who form secret societies and clubs and go through —

Mrs Marland: I wouldn't know about that.

Mr Kormos: Exactly — and go through rituals — some of them keep doing it when they're adults. They form secret clubs and societies and build little forts and fortresses out in the bush. It has the same seriousness as that which pre-adolescents carry with them into those sorts of things, and I suspect about as much reality, I suspect about as much import.

Government never had any intention of this coming to anything. What should it come to? Everybody's making reference to the act, some with more understanding of the act than others, and that's okay. They did it; I'll do it too, because it seems you're supposed to do it if you're sitting on the committee. It's the thing to do. If you don't make reference to the act, if you don't refer to the act, somehow you're being delinquent in your duties as a member of the committee. People have been doing that: "We're going to make reference to the act; I'll refer to subsection (3) of section 4," what have you.

I've looked at it, quite frankly, with respect to section 34 because 34 was the one that sort of was the — notwithstanding that Mrs Marland wants to come to the defence of the minister, and God bless, that's fine, but it's all after the fact. The horse has already bolted. She's trying to close the door. The fact is the commissioner said he's guilty as charged. He breached the act. Mrs Marland says, "What he did was simply," and then goes on to explain what he did. Well, what he did was simply violate the Members' Integrity Act. There's no question about that.

1450

I've already, or we've already — Mr Silipo joins in — been clear on the fact that nobody is sitting here suggesting that the commissioner's disposition of it was inappropriate. There is no suggestion of that. I don't think the fact that the commissioner didn't impose a penalty is in dispute by anybody here. I'm sure of that.

But the committee, acting on behalf of the assembly, has a responsibility to consider and respond to the report. Fair enough. Then, of course, another reference to the act, I think it was Mr Baird. He wanted to read subsection (4).

Mr Baird: Page 4.

Mr Kormos: You don't refer to the pages when you do that. It's bad form because the act could be reprinted, and then it's not page 4. It's like the abridged version or the unabridged version. It's like the illustrated version or the paperback. So here we are. Subsection (4), he wanted to read that, by God he did, and he reads well. A whole lot of public money has been spent on his education to some benefit, a far lot more public money than will be spent on the children of the people watching this because of this government's agenda when it comes to defunding support for post-secondary students, along with a whole lot of other things.

We know we can't increase the penalty; we can only decrease the penalty; we can only reject the penalty. Sorry, we can't even decrease it, because you can't go down the ladder. You can simply reject a penalty if a penalty is imposed, be it that intermediary one or the penultimate one. This committee has no power to deal with the no-penalty provision at all, because you can't reduce that, but that doesn't relieve the committee of the responsibility to consider and respond to the report.

Considering and responding to the report, in view of what the committee's powers are to invite and/or subpoena people to appear here, I think is pretty broad-based. The consideration of the report could be aided by any number of people. Mr Leach was here and he wasn't really of much help. He did his best. He did his very, very best — I'm sure of it — to be helpful.

This is part of the problem. Mr Baird, when he asked the minister, talked about the letter being distributed and there was a comment about 600 and then a quip about only 500 had it not been intended to be a secret. But it wasn't the letter to the commission that was purportedly distributed; it was the response to constituents who had made inquiries about the restructuring commission and the hospital shutdowns that had been distributed. It was the April letter, and I believe it was April 10. It wasn't a matter of his wanting to keep this secret or not secret, but he sent out some 600 copies of that later letter, the April letter, indicating he had sent a letter to the commission, which is cc'd to a couple of people. He made reference to that. He didn't include it as a cc, it appears, with his letter to constituents.

The problem is that he sent some 600 out to people who had made inquiries — that's where he got the mailing list — but I tell you there was a John Barsad lurking somewhere, because somebody obviously ratted him out to Mr Kennedy, the member for York South. Either a recipient of one of the letters or an acquaintance of a recipient gave this to Kennedy, and as Mrs Marland says, Kennedy said, "Aha, gotcha," and Kennedy submitted that subsequent letter which made reference to a letter to the restructuring committee to the commissioner.

I'm not sure the committee was clear, based on what Mr Leach had to say to it, about exactly what letter was distributed, but at the end of the day we're left with a very clear impression of what went on here. Mr Leach was simply trying to do some constituency politicking. No two ways about it. Mr Leach probably knew he had no power over the hospital restructuring committee. We've heard the commissioner refer — he didn't use the language of "frustrating," but indicated — to how frustrated Mr Leach must be moving from the arena he moved from into politics, from an arena where he could make things happen to politics where, as we all know, things happen with far less speed or precision than they do in other sectors.

Mr Leach was politicking. Here is he is: He's with the government. The government is identified with the hospital restructuring committee that is shutting down hospitals all over Ontario. Mr Leach wants to cover his butt vis-à-vis his constituents. Other MPPs from the government, be they ministers or backbenchers, are trying to do the same thing in their ridings.

At the end of the day, he breached the act. Nobody from any caucus could indicate this was anything akin to the worst offence or the worst breach. What's interesting and what we might have discovered would be an explanation of how Mr Leach didn't think it was contrary to the act but how other ministers did. That's where Jim Wilson, the Minister of Health, was important, because he appears to have known that he oughtn't to have written

to the health restructuring committee, be it on MPP letterhead or minister's letterhead or not.

Does this committee have the power to fire Mr Leach from the cabinet? Of course not. Does it have the power to compel the Premier to fire him from cabinet? Of course not. But I think the committee has a responsibility. There are going to be partisan shots — you bet your boots there are — during the course of it, but surely if the committee has a responsibility to consider the commissioner's report and respond to it, it ought to do that. It ought to do that for some of the reasons that Mr Leach — what's great though is that Mr Leach has transformed himself from a mere miscreant to a crusader for the rights of members of the Legislature to advocate for their constituents. His spin doctors have put a remarkable new turn on this, and it has been picked up by some of the members of the government here. They're talking about, "Surely we've got to start defending cabinet ministers' rights to advocate for their constituents, and that's all poor Mr Leach was doing."

The problem is that when he did so he broke the law. He violated the act. I'm not really upset about that. I'm far more upset, and I think people watching are far more upset about the fact that he would hide behind a misinterpretation of the commissioner's statement that no penalty will be imposed. That's of concern, because as I said earlier, I suspect that in the first instance people really did interpret it that way, the people around Mr Leach, the ones who went, "Oh shucks" when they saw the commissioner's report, hoping against hope that the commissioner was going to find in his favour, yet they see the report and they go, "Oh holy zonkers, the boss is in trouble again," and they went, "Phooey, but thank goodness the commissioner recommended that no penalty be imposed."

I'm sure they genuinely in good faith, but in total ignorance, misinterpreted that as meaning the commissioner is recommending he not be fired from cabinet. So that lets everybody off the hook. Mr Leach is in an interesting position now, and he's using language today very clearly and not inappropriately that it's the Premier who decides who's in and out of cabinet. Outside, when he was being scrummed, he repeated that again. He said that before he even had a chance to tender his resignation — he didn't say that, but he made it clear it was before he had a chance to tender his resignation — the Premier said: "Al, we'll have none of that. We'll have no resignations being tendered from you." Well, that's what he told the press out there.

Mr Leach today is very careful to talk about how the Premier decides who's in and out of cabinet. I think Mr Leach is laying some groundwork for the not-so-distant future in a way that, let's say, Sheila Copps didn't until after the fact.

Mr Silipo: Time will tell.

Mr Kormos: In a way that Sheila Copps didn't, but only after the fact. Now that's not called laying groundwork, that's called doing repair work, that's called doing catch up, what Sheila did after she became — what was her ministry?

Mr Silipo: Minister of Canadian Heritage.

Mr Kormos: Minister of Canadian Heritage, a very important role in our country. She of course had to

indicate that she would be pleased to serve her country in whichever way the Prime Minister saw most suitable, saw fit, and that there was no such thing as a demotion. Of course she was laying the groundwork.

1500

I suspect Mr Leach has the anticipation of finding himself in a position where he might be questioned, "Gosh, Mr Leach, you're now minister of whatever" — which could well be the title of the ministry, quite frankly. "Is this a demotion? Is this a response to the conduct the commissioner commented upon the third time or the conduct the commissioner commented on the second time or the conduct the commissioner commented on the first time?" He can say, "No, I'm pleased to serve my province." He talked about service to the province, but you see, he also has some difficulty because he wants to be able to serve his constituents.

When I asked him about SARB, I shouldn't have been unfair like that; I should have explained to him it was the Social Assistance Review Board, because to a minister who has never done grassroots advocacy, SARB, that kind of acronym, means diddly-squat. He wouldn't know what the heck it means because he doesn't do that kind of stuff, right? WCAT I think he had a little better handle on, but he would have been familiar with that by virtue of his role with the bus system here, the Toronto Transit Commission — I'm from small-town Ontario; we have bus systems, that's it. There are no subways in Welland. We've got buses, and there are going to be fewer and fewer of those as this government abandons public transit and leaves small-town Ontario without and forces them to abandon their public transit systems, small and struggling as they are.

So we've got Leach coming here today trying to paint himself, and doing a pretty good job at it, as being sort of a hero of oppressed cabinet ministers. You can almost see the scroll on his wall: "Cabinet ministers unite. You have nothing to lose but your chains." He will lead these cabinet ministers from the wilderness of not being able to advocate for their constituents.

One of the tradeoffs — it's like being Speaker. What Speakers have to do in their ridings is they have to convince their constituents: "As Speaker, I have special access to cabinet ministers. Don't worry that I'm a Speaker and I can't sit in the House. I've got special access to cabinet ministers, so don't forget me come the next election. Just because I was a Speaker and never debated a single issue in the Legislature, don't think I've ignored you, because Speakers get special attention." That's the line they use.

Government members, in their ridings, undoubtedly want to tout to their constituents that, "I'm with the government, so this riding gets stuff the other riding doesn't." That's the line government members use. Mind you, when they were in opposition they told a different tale. Cabinet ministers, of course, have to impress their constituents with the fact that by virtue of having a cabinet minister being your riding rep, you've got somebody sitting at the table; you've got somebody right there in the inner circle with power, with the ability to make things happen.

If you're not a cabinet minister your constituents complain to you: "You're in the government. How come Margaret Marland isn't a cabinet minister?" People have said that; they've been angry Mike Harris didn't put her in cabinet. She has to explain that since she's not a cabinet minister she has more time to advocate for her constituents. You guys know all the lines. This is the spin that goes on and has gone on for ever and ever.

Mr Leach wants to be all things to all people. Think about this, spin doctors. Think about the neat politics that would have happened had Mr Leach said: "I violated the act. I didn't intend to. I thought I was doing the right thing. I didn't make the inquiries I should have made, and because I'm a minister and because I believe ministers are held to high standards, I resign." Think about the goodwill. How could the opposition have been critical? He would have received, as you know, a round of applause. Honest, there might even have been a standing ovation. Then Mike Harris could have brought him back in 25, 30 days. That's the norm. He would have become pristine again by virtue of showing honour, by virtue of displaying honour.

Or Mike Harris could even have taken this tack, and think about it next time. This is a tactic that is used by political leaders internationally, and as often as not from totalitarian countries, which makes it very suitable for here in Ontario. It would be for Al Leach to have tendered his resignation and expressed his mea culpas, to have shown the humility necessary for a cabinet minister. If Mike Harris had said, "If he weren't so important to the functioning of this province, if his acumen and skill and leadership throughout Bill 26, for example" — you remember Bill 26 — "if his leadership hadn't been so successful around Bill 26, if he weren't so important to the inner workings, I'd have accepted his resignation; but since Al Leach is so important to my inner circle, I couldn't function without him at my left-hand side or at my right-hand side," they would have both looked good. Leach wouldn't have had to go through this exercise.

He was glad it only broke a couple of days before the House rose because you didn't have a protracted period of question period; it would have occupied question period. You can't ring the bells any more, unlike what the Conservative caucus and the NDP caucus did to Joan Smith. She acted in good faith as Solicitor General, in the best of good faith. She didn't know that what she was doing was wrong. She didn't try to interfere with what was happening; she merely tried to impact on the process. Joan Smith wanted to ensure that everything was okay. She was dealing with one of her constituents too, no self-interest in it for her, but the bells rang until Joan Smith was gone, and in hindsight — and others have commented on this too — perhaps more than a little bit unfairly. Once again, had Joan Smith merely said upon initial confrontation: "There was a foulup. In hindsight, I shouldn't have done what I did. Thank goodness there's been no impact on the course of justice —"

Take a look at Jim Wilson, who had the dignity and respect to withdraw, in effect to resign, to move himself out of the position for the period of time in which an inquiry took place. He was cleared, and I can't have any quarrel with the disposition of that. Rather than stonewall,

rather than dig his heels in, Wilson understood that as minister he should withdraw.

Can we come up with other examples of the Al Leaches in this province? Of course we can, from all three political parties. You bet your boots. But they were errors in the case of all three political parties as much as they were in the case of Al Leach.

I shouldn't use reference to a jury, because people who have commented on it are right: This isn't a jury. In any event, as I told Mr Leach this morning, everything is cool, everything is okay, because the jury is stacked. He owns it. If you read that Grisham novel about the tobacco litigation, there they tried to buy off one or two members of the jury. Mr Leach owns eight out of 10 members of the jury. Even at eight out of 13, if the Liberals decide to come back, they are his.

Notwithstanding that, as one wag put it this morning, Mr Leach is in the curious position of — and in effect, part of this is reviewing his conduct, of course, because the consideration and the response and the report back are to the report of the commissioner. He's having his conduct — his misconduct in this case — reviewed by more than a few people who hope dearly that Mr Leach not only stumbles and falls, but falls flat on his face. That would allow them access into that inner circle which they so much aspire to; not every one of the eight members, but there are more than a couple over there.

1510

Think about it. It's the same syndrome as the bell curve, let's say, in a university class. You know that as long as there's a bell curve, as long as somebody else fails, you can do miserably but you'll still succeed. What bell curves do is entice people to hope that there's somebody less clever or more lethargic than they are, so that as long as that person is out, they're in.

You've got more than a couple of people sitting over here on the government side who, although they've got to play by the rules and wish Mr Leach well publicly, still have some sinister anticipation of some empty chairs at the cabinet table. Mr Leach's chair is as good as any, because once the occupant is gone, that chair looks and sits like any other chair.

Here Mr Leach is, as one person very cleverly put it this morning, having his conduct — because it is; it's a review of conduct — reviewed by people who want to appear to wish him well but who also know, and nobody wishes — well, the cabinet is a pretty hale and hearty group. There aren't any people frail of body; could be some frail of spirit, but nobody is overly frail of body such that vacancies would be created in the most morbid way. But surely there's going to be a shuffle.

I, for the life of me, can't figure out why the strategists took this spin on it, why they took this tack, other than to hold out until the cabinet shuffle takes place and simply engage in the exercise of stonewalling. At the very least, it proves to their own people that stonewalling works. That's what we've got here. Mr Baird all day is preoccupied, he's obsessed; his obsession with CNN has become a mania.

Mr Baird: I don't have cable in my office.

Mr Kormos: This obsession with it: I envision him up at 3 and 4 in the morning watching the stock market

reports across the bottom when nothing else is being broadcast just so he can see the CNN logo on the lower right-hand corner of the TV screen. He's phoning people, saying, "It's 3 in the morning and I'm still receiving CNN." He knows about stuff that nobody else knows about. He has been watching Senate hearings. He's obsessed with it but he wants to point out that this is not a Senate hearing. As he put it earlier, this is the Canadian way of doing it.

Yes, this is the Canadian way of doing it, just like the Canadians did the Somalia inquiry, with a coverup and a whitewash. This is a very Canadian way of doing it, with a whitewash and a coverup and with stonewalling, using the power of government to make it just go away.

It reminds me of those opening paragraphs of Orwell's book *Nineteen Eighty-four*, where you're introduced to this whole system of rewriting history, where they take old London Times and they shoot them down to the clerk who is working in that solitary office. His job is to rewrite the newspaper articles. If a person has been deleted from history, he rewrites the article so that it deletes any reference to that person. Orwell writes about how history is really so untestable, because you have no choice but to read and believe in what you're told in the books as soon as human memory is eradicated.

That's the purpose of stonewalling: You can turn black into white. As I say, Mr Leach started out as a mere bungling but well-intentioned nice guy. Now he's a crusader, wanting to change the rules for cabinet ministers so they can more adequately advocate for their constituents. If that isn't the same as that little clerk sitting in his basement tomb in the Ministry of Information or wherever it was in *Nineteen Eighty-four* rewriting history, nothing is.

I want to see what incarnation Mr Leach assumes next. We'll just have to wait. I want to speak to that motion too, by the way, but I appreciated the chance. Mr Silipo is obviously going to use all of the next 30 minutes. I wanted to speak in many respects to how silly this whole thing really is. It's all to no end. The government never had any intention of having it come to any end. They didn't ask Mr Leach questions such that he could elaborate on the background that led to this, rather used their 15 minutes of time primarily to rush to his defence.

Again, I understand that. Unfortunately this isn't the first government to do it — not by any stretch of the imagination the first government to do it. I'm looking forward some day, regardless of how old I am at the time, to seeing a government that doesn't do it that way any more.

Mr Silipo said time and time again, "Look, we understand that the circumstances are such that to pillory Mr Leach would be naïve and it would simply be unfair," but somebody had better devise a method around here. Whether it is a US Senate inquisitorial style that Mr Baird is obsessed with but none the less holds in disdain or some other, we'd better find some way of responding to these types of things and resolving them.

Part of this committee's response could be to talk about the prospect of changing the standards, if indeed that's the case, but you can't begin until you've got an acknowledgement that a standard was breached and that

that's a serious matter — it may not be worthy of resignation or firing, but at least that it's a serious matter for a cabinet minister to do that; regardless of how benign his or her motive is, that it's a serious matter for a minister to breach the standards, and that hasn't been done yet.

Mr Gilchrist: I'm pleased to express a few comments as we discuss this important topic. While Mr Kormos's allusion to George Orwell may not be the most apt, I'm sure the deletion of the five years between 1990 and 1995 is something that many people in this province wish they could do.

That aside, the reality is that we very much can consider the impact of the ruling by Judge Evans and draw some conclusions from his consideration of the specific matter and apply them to possible recommendations that this committee may wish to make back to the House dealing with how this bill might be amended or interpreted in the future.

I'm going to go back and pick up on a point we made this morning of which time did not permit a full discussion. The act itself at no point makes any distinction between the behaviour of a member and the behaviour of someone on the executive council, save and except that sections 10 through 18 of the act deal with certain financial issues that members of the executive council, otherwise known as the cabinet, have as extra requirements that are not faced by those of us who are not in cabinet. For example, with very few exceptions they cannot own any active businesses, they cannot even trade shares on the Toronto Stock Exchange and they have to establish a blind trust if they wish to retain any holdings of any kind. The act actually spends as much time detailing those specifics as it does talking about some of the philosophical guidelines all of us must keep in mind in the day-to-day carrying out of our duties.

But I think it is very important for anyone who has been at all intrigued by the judge's ruling or interested in the impact of Minister Leach's correspondence with the health restructuring commission to know in absolute terms that there is not one word in this act that states that someone in cabinet must operate to a different standard from someone who is not in cabinet. I think that's really quite a staggering fact when you try to assess the ruling of the judge.

Judge Evans, with all due deference, has made an interpretation. He has assumed certain things, and it is absolutely his right to do that. I don't question the past. I was under the impression, based on all the discussions that took place in the House in terms of the motion to establish this sitting of the Legislative Assembly committee, that we would have an opportunity to look at a far broader picture than just the specifics of Mr Leach's correspondence.

1520

Just a minute ago Mr Kormos suggested that what was necessary here was acknowledgement of the seriousness of the matter. I would have thought he would be paying attention when this morning Minister Leach acknowledged in the most unqualified way that he did consider it a serious matter. He also said that it was a genuine misunderstanding on his part and, quite frankly, the

Integrity Commissioner arrived at the same conclusion. But there is no doubt in the mind of the minister or anyone else that it's a serious matter. That is precisely why we are sitting here today at this meeting of the committee.

I think, though, to try and make more of that one incident, which the Integrity Commissioner has himself said was just a misunderstanding, really reduces the importance of this committee meeting to a witchhunt and trivializes what should be a very serious discussion: the long-term evolution of this bill and the evolution of the members' responsibilities in their home communities.

A point was made this morning by the minister that after riding redistribution in the next election there will be 103 ridings in this province, 103 members sitting down here at Queen's Park. We currently have the smallest cabinet since I think it was 1956. That may or may not continue to be the case, but if it's in the same ballpark, we're going to have over 40% of the members who are elected in the year 1999, if this ruling is allowed to stand without any further qualification or elaboration, who will be largely or completely constrained from dealing with what every one of us would accept are the genuine constituency concerns that are brought to the attention of all of us on a day-to-day basis.

In this case it was asking for an extension of time so that the people in the riding of St George-St David would have the same opportunity that was afforded to the people in Thunder Bay and to the people in Ottawa to express their comments — not the minister's comments, their comments — about what should happen to Wellesley, Central and other hospitals in downtown Toronto.

I think there is a consensus — we've heard it from the third party here this morning — that in and of themselves those are reasonable things. That is an expected part of being an MPP or an MP, or a city councillor for that matter. We are each charged with certain responsibilities. There are certain areas of public activities which each level of government is charged to oversee. Clearly it would be an abrogation of our responsibilities if we were to simply take the position that, "I can't talk to a constituent because I've been given this other job," namely, being put in cabinet.

I think what is before us is a glaring example of how, when a bill does not speak with the kind of definition and the kind of specificity that needs to be included, we can be tripped up, as times change, as the number of members change and as various other evolutionary factors are at play.

I must admit, the way I asked the question invited a somewhat tongue-in-cheek response, but section 5 of the act says, "This act does not prohibit the activities in which members of the assembly normally engage on behalf of constituents in accordance with Ontario parliamentary convention." That's a very clear statement, one might assume, if in fact there was a handbook you could then pick up that told you what Ontario parliamentary convention is, or is not in this case.

The fact of the matter is, as the minister pointed out, that such a handbook does not exist. He has been adjudged against a standard which is not written down anywhere. I absolutely respect the fact that our two

colleagues opposite — one colleague present right now — from the third party have in fact been in a similar situation to the minister. They have occupied a seat on the executive council and they have faced certain restrictions in how they went about their duties on a day-to-day basis. But I have not heard a suggestion from either of them that such a handbook exists, that there is a summary of all those other past precedents that would guide the hand and the actions of someone who is selected by the Premier of the day to sit on the executive council and to effectively be the government to the province of Ontario.

I don't think there's a person in our province who would accept the premise that, in the absence of anything written down, in the absence of a stated standard, it is fair to judge anyone, whether it's a cabinet minister, an MPP or a driver on the road. The old saying, "Ignorance of the law is no excuse," may apply when you have a statute that's written down, but I think just the opposite rule would apply when you are to be governed by some collective mindset that may or may not have been passed down in song and myth from generation to generation. These aren't Nordic legends we're dealing with here. These aren't Aesop's fables. These aren't even things of biblical proportion. These are standards that have now been used to judge the behaviour of a cabinet minister.

While it may be very easy for the commissioner to say, "My conclusions were ameliorated by saying that there would be no penalty assessed and that I accept it was sheer inadvertence and a sheer misunderstanding that allowed the minister to make this misstep," I think that avoids the point completely. This act does not in any way spell out why or under what terms the minister has transgressed. It is fair for the Integrity Commissioner, as I said before, to apply the good sense that he has acquired from all his years on the bench and to, in effect, read between the lines. But I would say on the flip side that surely, had he taken another step beyond the no-penalty option that was available to him and suggested a reprimand or something more serious, speaking for myself, my concern would be even greater.

I am somewhat dismayed that the members opposite would not appear as keen to join us in the discussion of how this sort of thing can be prevented in the future and how we could give greater clarity to the actions that are considered appropriate by a minister of the crown and instead would rather dwell on the specifics of this matter, which I think have been dealt with quite conclusively by the Integrity Commissioner.

I think it is really incumbent upon us to send a message back to the House that these conventions be recorded in such a way that everyone who is offered that opportunity to sit on the executive council be afforded the opportunity to assess the impact that will have not just on their personal life but on their ability to carry out their function as an MPP.

It may very well be that if rules are applied that are so restrictive that nothing but a standard response back to your constituents to the effect that, "I'd love to help you, but I can't because I'm now in cabinet," if that became the sum total of the output of cabinet ministers' offices, we should be telling people that up front and anyone who's serious about dealing with the very legitimate

concerns that are expressed by constituents, anyone who is serious, quite frankly, about getting re-elected by dealing with those concerns in a forthright and responsible and hopefully productive manner, would be allowed to balance, on the one hand, the ability to have a significant impact within one ministry and sitting around the cabinet table on the whole province against the loss of influence, the loss of effectiveness, the loss of productivity in their home riding. Anything short of that is absolutely unfair, and we are very much closing the gate here after the horse has bolted.

This morning we have already heard a number of members indicate that there were certain sections of the act that they didn't realize existed or didn't know applied to them. I don't think there's any doubt that for those of us who are not in cabinet reading the sections pertinent only to the executive council would be a little presumptuous. Having said that, now being confronted with a need to go through this act in great detail, there is absolutely nothing that anyone who was the recipient of the fateful phone call from the Premier would have deduced by reading this act. There is nothing, and I would challenge the members opposite to show me where in this act there is anything, an inference, a phrase, an express statement, that would have guided this minister or any other to not do the sort of constituency work that the minister, we heard this morning, suggested that he thought was appropriate.

1530

While one of the members opposite may roll his eyes at that suggestion, again I think it comes right back to the pivotal point of everything we're discussing here today and next week, and that is: In the absence of anything stated, if the member opposite knows of some other way that we can communicate to the ministers expressly those rights and responsibilities, then I would ask him (a) to produce it, and (b) more important, why on earth it is not embodied within the act?

Surely it goes without saying that, when someone is elected to this place and you are told that you are governed by the Members' Integrity Act and the Legislative Assembly Act and the standing orders of the House, if someone took it upon themselves to read those three missives, those three tomes, you would then be in a position to informedly do your job without fear of being tripped up, without somebody coming along after and saying: "Oh, we forgot about that little loophole. We forgot about the trapdoor that's behind section 4 in the Members' Integrity Act. I know we didn't write it down. I know it's not there. I know we're not fair to you and we haven't bothered to take all of that collective wisdom that has been built up in the last 130 years of this Legislature and put it down on paper, because we have this attitude that we've got to leave some grenades out there, we've got to leave some land mines out there just in case we're not in government next time."

That is extraordinarily unfair, and I genuinely am confused at why all parties would not be sitting here today looking at means to improve this act. After seeing the histrionics this morning by the official opposition who, for the sake of those who don't have the benefit of a wide-angle shot in this room, have now decided that

being at the cottage is more appropriate than sitting here and doing their duty —

Mr Kormos: But they got the media hit.

Mr Gilchrist: The member opposite says, "Yes, but they got the media hit." Doesn't that say it all? Their call to have this committee meet during what would normally be the summer break was in fact motivated by cheap theatrics. It was motivated by the desire to govern by headline in the Toronto Star. There's no substance behind it. If they had anything of any substance to say, they'd be here saying it. But no, they would rather stick their faces in front of a microphone for a few seconds, get the cheap shot in, and then, like schoolyard bullies after they get the sucker punch in, walk away. They're not prepared to engage in the kind of debate, the kind of dialogue I think is appropriate here.

As I read this act, it is absolutely fraught with problems. It is fraught with the sorts of loopholes that I would have thought the previous government would have been just as concerned when they drafted this bill to make sure were not there, because they had cabinet ministers as well.

We've already heard reference a number of times this morning that it isn't even within the purview of this committee to inquire any further into the specific contravention of the act before. I won't belabour the point, save and except to say that it couldn't be clearer. Given that all three parties then have accepted the premise that we should be meeting here today to hold these discussions and given that the act says we can't even talk about, we can't deal with, we can't amend or change the rulings of the commissioner in this specific matter, surely then the only topic before us is, where do we go from here?

Mr Chairman, my submission to you would be that as part and parcel of any motion that we adopt further along in these proceedings, as part and parcel of the motion that has already been put before us here this afternoon by Mr Clement, we give serious consideration to suggestions to the House that there is both an opportunity and a need to re-evaluate sections 4 and 5 of the Members' Integrity Act and to provide far greater specificity, to provide a very detailed framework on exactly what does and does not comprise the sort of convention that is alluded to, particularly in section 5 of the act.

I think the member opposite, who was in one of his more jocular moments suggesting that it is not appropriate for us to be defending the cabinet, purely and simply because to do otherwise might create vacancies, has seriously misjudged our team spirit, but more than that has seriously misjudged the intent of this act. It is known as the Members' Integrity Act. I take very seriously, and I'm sure my colleagues on the government side do as well, that we live up to the letter of this law. Living up to its spirit becomes a little more difficult as long as there is phraseology in there to which none of us can draw any specific reference.

At some point either today or next week I would ask you to entertain a motion. We've agreed that we will not debate motions until the end, or you will not accept substantive motions for the purposes of discussion at this time, but I certainly intend to leave with you a motion that will ask in no uncertain terms that we take this opportunity to —

The Chair: Mr Gilchrist, you can move a motion.

Mr Gilchrist: But the members opposite have expressed a desire that we deal with things at the end, so I will table one in writing so we have the opportunity to digest all those things, rather than sidetrack further debate this afternoon. It would be a terrible missed opportunity if we didn't ask the House leaders and the Premier to entertain suggestions of how we could revise this act so in the future members of the executive council are not tripped up in this way.

The only other point I would like to make to you — I don't know how much time we have.

The Chair: It would appear to be about 10 minutes.

Interjection.

Mr Gilchrist: Oh, is there someone else who wants to speak to this? Forgive me. In that case, not having seen any other hands go up, I'll pass on the rest of the time to Mr Baird.

Mr Kormos: Now who has the penchant for microphones?

The Chair: Who is the next speaker for the government?

Interjection: I think Mr Silipo was next.

The Chair: So you're giving the government time to Mr Silipo?

Interjection: No, we'll let him use his own time.

Mr Gilchrist: I guess indirectly I just did.

Mrs Marland: We're trying to move it along.

Mr Gilchrist: You are kidding yourselves.

Mr Silipo: It gets more interesting as the moments roll by.

Interjection: We're not rolling.

Mr Silipo: We're not rolling? Actually, I think we are rolling. I beg to differ.

I realize we're in what some people think is sort of a nebulous period of, as a committee, deciding what next and what we do. I think it's important, and I always find as one of the few personal rules I have, that when there's some confusion, you go back to basic steps. One of the basic steps here for me is to look back at why we're here.

We all know that we're here because of a decision that the Legislative Assembly made following a report of the commissioner with respect to a breach by Mr Leach of the Members' Integrity Act. We are acting, in effect, as the Legislative Assembly, for all intents and purposes, although obviously at the end of the process we will report whatever conclusions we come to both to the commissioner and to the House. It's important to stress that second point, "to the House." I want to come back to some of the things we need to do because of that responsibility that we have to respond not just to the commissioner, but indeed to the House as well.

It was Mrs Marland who talked earlier about bias, and that she comes to this as an unbiased member. I'm assuming what she meant by that is as somebody whose mind is not necessarily made up on any particular point of view at the beginning.

1540

I recall one particular lesson in a grade 9 history class where the teacher put up the word "bias" on the blackboard and proceeded to talk to us about the fact that all of us have biases. Those biases are made up of our

background, our upbringing, all the things that go into our thinking and shape our thinking. That is not to say that in being biased we are necessarily fair or unfair. That's one of the other characteristics that we develop.

I obviously come at this with a particular bias which I am prepared to be very open about. I hope others would acknowledge that they too have a bias. Whether we are in opposition or in government, we come at this from a particular perspective, but I think hopefully we all come to it as well with a willingness to be fair: fair to Mr Leach as the principal culprit, if you will, in all of this, and fair, through him and through the report we have in front of us, to all of us, whether we are now in cabinet or whether we may aspire, as some of my colleagues opposite, to be in cabinet, or whether, quite frankly, as some of us on this side of the table, we plan to be in cabinet with the next election.

I think it's fair that we look at this in a way that deals, yes, with the question of what is at the end of the day the best way to deal with that line that's drawn between a backbencher, and that means whether you're in the opposition ranks or on the government side but don't have the responsibility of being in cabinet or indeed being a parliamentary assistant, and what does all of that mean? I think at the end of the day that is one of the things.

I want to say to Mr Gilchrist that I certainly remain very open — to the extent that we can in the limited time we have as a committee, but beyond that, even if all we do is to go to the point of suggesting that this is an area that needs some further work — to looking at whether we want to suggest some changes be made in this area or that this area be looked at again.

I have to say, as I said this morning directly to Mr Leach, that I have some empathy, in fact more than some empathy, for the position he has found himself in in this situation, in this instance. The inability that you have when you cross that threshold from being a "simple MPP" to being a member of cabinet is incredible.

I can tell you, I know it because I lived it. I spent the first nine or 10 months of the previous term as a backbench member of the government. One of the issues I was very involved in through my constituency office at the time was the whole area of workers' compensation. Many constituents of mine who are older injured workers were involved and still are involved, far more than they should be, in ongoing disputes with the workers' compensation system. The difference I saw in the freedom I had as a backbench MPP prior to being in cabinet and the limitations that were put upon me once I entered cabinet was like night and day. Whereas before I could advocate to the umpteenth degree that I felt comfortable with and felt the situation warranted in the individual cases on behalf of constituents, all of a sudden I could not. There were some things I could do and there were many things, or some significant things, that I couldn't do. We couldn't appear in front of WCAT. We couldn't even appear at some senior levels of the appeal process.

To Mr Gilchrist I say, those rules weren't written down. We did have the benefit when we were in government of having, in addition to the old legislation, the Premier's guidelines as they were then called, which spelled out in a little bit more detail some of the restric-

tions that were placed upon members of cabinet, which I understand the current Premier has decided not to carry on or not to adopt, but simply to rely on the Members' Integrity Act.

It's important to remember that the Members' Integrity Act, in its evolution, came about primarily at the urging of the present commissioner and also as a process to try to put together once and for all a set of rules that could be codified in law that would take into account not only the pre-existing legislation, the old conflict-of-interest legislation, but indeed some of the basic premises that were part of Premier Rae's conflict-of-interest guidelines. As has been noted already, the result was arrived at with unanimous agreement in the House, in that the legislation was adopted by all three parties unanimously when it went forward.

Why do I belabour that point? I do it because I think it's important we understand, first of all, how the legislation came about, and also, that while the legislation may not, as Mr Gilchrist would want it to, be clear about what certain things mean, such as Ontario parliamentary convention, I suggest to you that to try to codify Ontario parliamentary convention has far more implications than simply in this area, because it is one of the traits of our system of government that we have many "rules" by which we abide that are not written down. That's part of the tradition we have as a government. We've certainly seen some of that through some of the debates we've been involved in over the last five or six months in the House.

It's fair to say that it may very well be, certainly it seemed to be the case in this instance, that people who are in cabinet may or may not fully understand what that means, may or may not fully understand the limitations that are upon them. It seems in this case that Mr Leach did not. I think it's a finding that the breach he made, while a significant one, was also one that was made in good faith, as the commissioner found, and I accept that, as we all do.

It's also interesting to note that at least one other of his colleagues, the current Minister of Agriculture, Food and Rural Affairs, knew that there was a limitation to what he could do, because the commissioner's report appends to it a letter from Mr Villeneuve to Mrs Papatello in which she's asking him to intervene with respect to another matter in front of the hospital restructuring commission and he writes back saying, "I can't do that because, among other things, given the independent nature of the commission, it would be inappropriate for me to intervene directly with the commission." The same commission; the issue there was the Montfort Hospital.

All that is to say, yes, Mr Leach didn't know he was breaching the act. He said that this morning and that's fine. But certainly at least one other minister was aware of that.

The point we need to extrapolate from this is not who knew or who didn't know. That really is irrelevant at this point. What is important is that simply not knowing doesn't make it any less of an offence. Clearly in this case there was an offence. Clearly in this case there was also a situation in which the commissioner found that this particular minister's conduct was problematic, not only in

this instance but at least in one other instance that was before him.

The other thing that needs to be stressed in all this is that what we are talking about here is conduct as a minister. As the commissioner himself says about the fact that one is a minister, you can never shed that, you can never walk away from that. "A minister is always a minister," the commissioner says in this report. Those are words that the commissioner, if you read back — Mrs Marland referred earlier to the commissioner's annual reports. I'll bet you will find two or three references in each of these annual reports on that very point, because the commissioner has been clear about the way in which he has interpreted this legislation and the previous legislation, that one of the basic premises upon which he interprets it is that a minister is always a minister and that simply writing something on MPP's letterhead doesn't remove you from that category of being a minister.

Where do you find the answers? You find the answers, ironically enough and interestingly enough, in decisions like this. You find the answers, interestingly enough, in the annual reports Mrs Marland was referring to earlier. You find it in the points the commissioner has been making about his continuing and ongoing offer to be available to speak, not only individually to people including members of cabinet, but to caucuses in terms of what he believes is the correct behaviour and the unacceptable behaviour that individual members, particularly ministers, might get themselves into.

1550

All of that to say that there is sufficient ground and sufficient findings here for us to understand that what the commissioner is talking about in finding a breach is the conduct of Mr Leach as a minister. The reason I stress that is that when I look through the report, I also see the commissioner making that point quite clear, repeatedly. The commissioner is not somebody who is willingly or readily going to enter into the political realm, and so while he may not have come down, as I read it — I appreciate this is my own interpretation and only my interpretation — while he may not have reprimanded Mr Leach, I am not sure how you can read the report and not see it as a pretty clear condemnation of what Mr Leach has done.

We may agree or disagree with that. We may find that the standard to which Commissioner Evans is holding, in this case, Mr Leach, and any of us who might be in that position, is usually high. That's fine. We can talk about that. If we want to change that, we're prepared to take a look at what changes might be acceptable within that.

But the finding is clear, and the finding is also clear that it's based upon a combination of the law and parliamentary convention. It's no accident that the commissioner spends two pages in his report outlining parliamentary convention. It's no accident that the commissioner refers to the incident Mr Collenette was involved in at the federal level, quite a similar situation, where he finds that Mr Collenette, having written in that case to the Minister of Citizenship and Immigration — in that case he was simply asking; he wasn't particularly saying what should be done with respect to a particular matter. He was

simply asking the chairperson — that was the problem — when he wrote to the Immigration and Refugee Board, asking the board to review the constituent's request for an expedited hearing. You could argue it was a process question he was writing to, a similar situation to here. It was a breach, as was the situation here. It was also a breach.

Why have we been belabouring this point? The reason is that when you look at the conduct of Mr Leach in this case, the breach occurred because of his position as a minister, and so when we belabour the point about penalty, it's not because we want to substitute our penalty for that of the commissioner — (a) we can't do that, but (b) we accept under the circumstances that it should not be us but it should be the commissioner who makes that decision with respect to penalty.

I also take the commissioner's findings and the commissioner's going on as he does in spelling out parliamentary convention, in spelling out in effect the behaviour Mr Leach has carried on, to tell us very clearly that he is not about to get into the whole question of the political penalty, and that, ladies and gentlemen, is our responsibility.

I said earlier that we are charged by the House with reporting and responding, not just to the commissioner but also to the House, and it's on that second point that I think we have a broader responsibility. The first of that responsibility has to do with the issues Mr Gilchrist was raising, to deal with: Are the rules too stringent, essentially? Are the rules such that they need to be or should be further codified? It may very well be that some of these things can be codified. I don't think you could codify all of what parliamentary convention is all about, but maybe there are some things that can be taken out in terms of a compilation of the various findings and the various interpretations and put together in something that would be useful, not just for ministers but for all members to be able to use. As I say, I think that's part of the purpose of the annual reports of the commissioner, but it may very well be that we need to look at that in a more structured, a more useful way.

The other part of our responsibility to the House has to do with this question of Mr Leach acting as a minister and his responsibility, and the question of penalty therefore going beyond what the commissioner can determine. Again, it's clear in my mind that we cannot substitute our decision for the commissioner's decision with respect to the penalties, but that's the penalty as set out in the four parts of the subsection in the law that members have quoted from, and I won't quote from it again.

There is nothing in the act that deals with the question of membership in cabinet. In fact, I thought one of the most revealing things that came out of this morning's session was Mr Leach himself finally acknowledging that, against his earlier refusal when we asked him questions in the House and particularly against the Premier's refusal. For me, one of the useful things that came out of this morning was when I asked Minister Leach about that issue and he was very clear, and I invite people to look back at the Hansard, in saying that in fact the issue of membership in cabinet was not for the commissioner to determine but was up to the Premier to decide. He talked

to us very clearly, and I think very forthrightly, about the tone of the conversation, if not the conversation itself, that he had with the Premier and made it very clear that the Premier was not interested in seeking his resignation.

That's why, if you recall, when we dealt with this issue in responding to the Premier's comments in the House, one of the first things I said in responding for our caucus was that the Premier, by the way in which he had chosen to deal with this issue, had turned this from an issue dealing with Al Leach's conduct to also an issue dealing with his own conduct as Premier and the question of the standards that he's prepared to accept and to set as Premier relative to the standards he was expecting of past premiers, whether that was the Premier under whom I served or premiers prior to that.

To me, that remains one of the things I know the government members don't want to talk about. I know it remains one of the things which they have trouble getting into, because to do so means, in effect, criticizing the Premier. But that's really one of the fundamental issues coming out of this process. It's why I believe our decision, mine and that of Mr Kormos, to stay rather than to take the route that our Liberal colleagues chose, which was to say, "We don't like the rules so we're going to leave," is significant, because it's doing this job even against the tightening of the rules that government members, Tory members, want to impose upon us that allow us to get the kind of information out sometimes that is useful.

I say again, the admission by Mr Leach this morning was one of the most significant things I have heard on this issue in a long time. It may very well be, as my friend Mr Kormos has said, that he's just sort of setting the groundwork for what may happen later this summer or, as some would think, maybe even later on in the year when there will be a shuffle and he will be moved out or moved to another post and will be able to justify that in part on the basis of the fact that it's the Premier's responsibility.

We all know that. We all know that at the end of the day it's the Premier who decides who is in cabinet, who isn't and in what positions. We also know that it's up to the Premier to determine what conduct is acceptable or not acceptable to him.

One of the fundamental problems I have with what has happened in all of this is that in effect we have not yet gotten to the real issue, which is, what is the level of conduct Mike Harris is prepared to accept and why all of a sudden is that standard different, now that he's the Premier, from the standard that he wanted to set and expected of previous premiers?

We all know that he could have dealt with this issue in a far different and more constructive way as it relates to Al Leach. As previous ministers have done, in my view Al Leach had no choice but, on the findings of the commissioner, to offer his resignation. The Premier could have then accepted that resignation or decided he was going to turn it down on the basis of having acknowledged that Mr Leach had done something wrong —

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Mr Gilchrist: Here's a guy who lost his job for posing in the Sun? You're asking a question seriously?

Mr Silipo: I say to my friends opposite that what has happened through all of this is that this has become an issue not just about Al Leach's behaviour. I'm prepared to accept and not go beyond the commissioner's findings on that. Again, I continue to underscore the point that I have more than some empathy for the position Mr Leach found himself in, in wanting to deal with and represent his constituents. But the point is that he did it in a way that breached the law. He did it also in a way that showed, as the commissioner himself found, that he is "having difficulty in adopting an attitude which is less confrontational, more consistent with his present office as a member of the executive council, and more appreciative of the parliamentary conventions associated therewith."

Those are pretty serious words. Those are pretty serious conclusions for a commissioner to come up with. You can't skate around those by simply continuing to explain what it is you were doing, as in the case of Mr Leach in writing the letter. If it was a one-off situation, if it was the only time this had happened, if it was the only time Mr Leach had been in this kind of trouble, I think quite frankly those of us in opposition might have tried to make something of it for a while, but it wouldn't have gone anywhere because there wouldn't have been much to it. But this is also part of a pattern of behaviour. The commissioner himself has dealt with this now twice, two different instances dealing with Mr Leach's behaviour, Mr Leach's conduct as minister.

The commissioner himself refers in this report to one of the previous instances he was involved in, a complaint lodged by Ms Churley, the MPP for Riverdale, against Mr Leach, who approved of certain actions taken by Mr John Matheson, his executive assistant and a lawyer. That was, as people will recall, a situation in which Mr Matheson, who was Mr Leach's executive assistant, contacted somebody in a legal firm to inquire and complain about why it was they were taking up a case on behalf of a group of constituents. Essentially the conclusion the commissioner came to was that the activities of Mr Matheson were inappropriate and therefore, consequently, that Mr Leach, having approved of Mr Matheson's action, was also acting inappropriately. We also have the instance of this same minister's behaviour having been found by the Speaker of the House to constitute a *prima facie* case of contempt for the Legislature.

This is not a situation in which you have an individual who because of simple innocence commits a mistake and therefore we all kind of forget about it. This is certainly, if there ever was one in the history of this particular government, a situation that would have called, at the very least, for the minister to tender his resignation. Then, as I said and as my colleague Mr Kormos indicated, there were certainly a couple of different options that could have been pursued at that point, including if the Premier had accepted Mr Leach's resignation, I think us all understanding that would not have been a long-lived exile from cabinet.

I want to suggest to the members opposite that you may be protecting Mr Leach today, you may be protecting the Premier's approach to this today, but a few months down the line the real story will be told when we will find out how the Premier really chooses to deal with

this issue. That's one of the sad things about this process, that we aren't able to get at some of the real problems in this case because to do so would mean that the backbench government members — and not all backbenchers, because a lot of them, if not most of them, are parliamentary assistants — are in an incredibly difficult position. They have to defend, whether they like it or not, what the Premier has done, even though now the minister himself who's involved in this issue and is at the very heart of this issue has as of this morning admitted the basic point we have been making all along, which is that there is a clear separation between the commissioner's responsibilities, the commissioner's findings, the commissioner's recommendations and the commissioner's conclusions with respect to penalty and, on the other hand, the Premier's responsibilities with respect to conduct that he expects of ministers and the Premier's responsibilities with respect to conduct that he quite frankly sets for himself in determining ministers' conduct and certainly with respect to the kind of penalties the Premier himself, as the final arbiter of conduct in cabinet and who is and who is not in cabinet, determines.

Mr Leach himself has admitted as of this morning that separation clearly exists. I think the government members are being put now in an untenable position of having to continue to defend the Premier against even the clear, expressed words of the minister involved in this instance. I'll really be interested to see over the next couple of days what happens on that issue.

The Vice-Chair (Mr Gary Fox): That ends the rounds of debate. Where does the committee wish to go from here?

Mr Clement: Mr Chair, if I can suggest, the subcommittee report which was adopted by this committee contemplated two full rounds of submissions by the parties that were participating in this discussion. We have now completed those two full rounds, but as members know well enough, we were unable, as I understand it, to

obtain the Attorney General's participation on this day. He is not available on this day, but my understanding is he may be available a week from today, on Tuesday, July 22. If that is the case, clearly it would be premature to start discussion on the final report, either my motion or other subsequent motions until we have heard the commentary from the Attorney General. My understanding is that Mr Silipo and Mr Kormos are interested in hearing from the Attorney General.

Mr Kormos: I'm always looking forward to asking the Attorney General questions. I relish the opportunity.

Mr Clement: Mr Kormos is showing a great deal of emotion about this issue.

Mr Kormos: Enthusiasm.

Mr Clement: My suggestion is that we actually stand down until July 22, at which point we can resume our discussion with the benefit of the Attorney General's comments. I'd like to hear what the other members have to say.

The Vice-Chair: Would everyone agree to that?

Mr Silipo: I think that would actually be useful, given the decisions that have been made today. Obviously I continue to regret the government members' refusal to have the commissioner here. I think that would have been useful. Particularly in light of what the minister has said, it would have been useful to have him here to clarify the point we have been making which is around the ministerial question and the Premier's responsibilities.

But I think that for us to carry on the discussion, certainly it would be more useful to do that after we have heard from the Attorney General. The week's break I hope will also be helpful for all of us to reflect on what transpired today and perhaps we'll come next week with an ability on all sides to draw some conclusions that we've ignored.

The Vice-Chair: If everyone is in agreement with that, show hands. We'll adjourn till next Tuesday, July 22.

The committee adjourned at 1609.

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Mardi 22 juillet 1997

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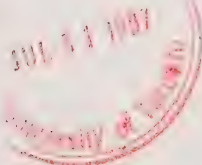
Report, Integrity Commissioner

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Tuesday 22 July 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mardi 22 juillet 1997

The committee met at 1009 in room 151.

REPORT, INTEGRITY COMMISSIONER

Consideration of the June 25, 1997, report of the Integrity Commissioner.

The Chair (Mr Joseph Tascona): We'll start the committee process now. I'd like to welcome everybody here, particularly the Attorney General, who is attending here today.

For the record, I'd like to note that there are two letters that have been received by the clerk of the committee. There's a letter dated July 17, 1997, from the Integrity Commissioner. I believe all members of the committee have that. The second letter that's been received is actually two letters: a July 16, 1997, letter to the Integrity Commissioner from Tony Silipo, MPP, Dovercourt, and a response to Mr Silipo's letter dated July 17 from the Integrity Commissioner. Those three letters will be exhibits and form part of the committee hearings. I take it all the committee members have these documents?

Mrs Margaret Marland (Mississauga South): Yes, we do.

The Chair: Does the Attorney General have a copy of these documents?

Hon Charles Harnick (Attorney General, minister responsible for native affairs): I do.

HONOURABLE CHARLES HARNICK

The Chair: On that note, we adjourned last date so we could hear from the Attorney General. I welcome the Attorney General here. The process is that the Attorney General will speak for 15 minutes, and the two parties here, the third party and the government, will have an opportunity for 15 minutes each to discuss matters with the Attorney General.

On that note, I'm prepared to proceed unless any committee members have a point they want to make. No? On that basis, Mr Attorney General.

Hon Mr Harnick: I'm accompanied by Dennis Brown from the ministry, if that's permissible.

Thank you for the opportunity to be here today. I have some prepared remarks that I'd like to proceed with, and then I'll take questions.

The recent report of the Honourable Gregory T. Evans, the Integrity Commissioner, concerning a communication by the Minister of Municipal Affairs and Housing to the Health Services Restructuring Commission has brought renewed emphasis and public attention to the Members' Integrity Act. As you know, this is a very important piece of legislation. To maintain public confidence in our

democratic institutions, the conduct of members of the House must bear the closest scrutiny. Accordingly, I would like to take this opportunity to address some of the issues that this legislation and Commissioner Evans's report raise.

Concern that public officials may be placed in situations of conflict of interest has a lengthy tradition in Ontario. For instance, the convention that members not vote on any matter in which they have a pecuniary interest has long been observed. This follows a practice that originated in the British House of Commons. Prohibitions against obtaining improper benefits first appeared in the Legislative Assembly Act over 130 years ago.

The first attempt to provide written, definitive conflict-of-interest guidelines was made under Premier Davis in 1972. These guidelines regulated the conduct of cabinet ministers by directing them to abstain from business and professional activities, to divest themselves of interests in public companies and to make public disclosure of private assets. These rules were applied also to family members of ministers.

In 1978 further guidelines were enacted to regulate communications between ministers and key officials in the justice system.

In 1985 these guidelines were extended to parliamentary assistants and confidential staff. A further change made at this time was to permit interests in private companies to be placed in blind trusts.

Conflict-of-interest controversies continued to arise, and former Lieutenant Governor John Aird was asked to make recommendations for new rules. Reviews of the Aird report culminated in the passage of legislation, the Members' Conflict of Interest Act, proclaimed in force on September 1, 1988. One of the initiatives of the new legislation was the creation of an independent adviser on conflicts of interest as an officer of the Legislature. The first commissioner under the act was the current Integrity Commissioner, the Honourable Gregory T. Evans.

Over time, it became apparent that there were elements of the Members' Conflict of Interest Act that needed re-examination. The standing committee on administration of justice considered this issue, and its September 1991 report on conflict-of-interest guidelines contained recommendations for amendments.

The Members' Conflict of Interest Act was reviewed in detail by the Honourable Gregory Evans, who was then Conflict of Interest Commissioner, and by representatives of all three parties. I had the pleasure of being the parliamentarian who took part in this review on behalf of our party. With the significant assistance of the commissioner, Bill 209, An Act to revise the Members' Conflict of Interest Act, was introduced in the House in December

1994. The new act, the Members' Integrity Act, 1994, received third reading on December 9, 1994, and was proclaimed on October 6, 1995.

Generally speaking, the new act provides a fuller and more detailed set of conflict-of-interest rules. In some cases, it authorizes a more flexible approach to resolving conflicts. I note that in introducing the new act in the Legislature, the Chair of Management Board at the time observed that it contained obligations previously found only in the conflict-of-interest guidelines established by the then Premier. Accordingly, separate guidelines would no longer be necessary. For instance, the new act prohibits cabinet ministers from acquiring real estate other than for personal use. This rule was incorporated from the former Premier's guidelines and was not contained in the Members' Conflict of Interest Act.

There are a number of other differences between the current law and the previous statute. You will note that, unlike the former act, the new statute begins with a preamble that sets out the underlying principles of the legislation. This statement of principle is worth repeating, since one of its purposes is to guide in the interpretation of the provisions of the legislation.

"1. The assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.

"2. Members' duty to represent their constituents includes broadly representing their constituents' interests in the assembly and to the government of Ontario.

"3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the assembly's dignity and justifies the respect in which society holds the assembly and its members.

"4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

Some of the differences between the two statutes include the following:

The definition of "conflict of interest" in section 2 has been tightened. Formerly, a conflict occurred where a member makes a decision at the same time that he or she "knows that in the making of the decision there is an opportunity to further his or her private interest." Now the definition of conflict includes two changes: A conflict arises where the member not only knows of an opportunity but where the member "reasonably should know" of an opportunity. Also, a conflict arises not only where there is an opportunity to further the member's own private interest but where there is an opportunity "improperly to further another person's private interest." Following this approach, the provisions regarding insider information and seeking to influence also apply to actions that further not only the member's private interest but another person's private interest.

The current act, unlike its predecessor, expressly imports parliamentary convention into the types of activities that members may engage in on behalf of constituents. Now members may engage in such activities

if they are "in accordance with Ontario parliamentary convention." I will be saying more about parliamentary convention shortly.

Finally, the new legislation expands the scope of the private disclosure statement that members of the assembly are required to file with the Integrity Commissioner. The scope of the public disclosure statement that the commissioner prepares on the basis of information provided by the member was also increased. Moreover, pursuant to subsection 21(5), information in a member's private disclosure statement may be withheld from the public disclosure statement if the commissioner is of the opinion that the information is not relevant to the purpose of the act and that a departure from the general principle of public disclosure is justified. A noteworthy change in the new act is that members are now required to file statements of material change in certain circumstances.

As you all know, the current legislation, like previous conflict-of-interest regimes, imposes special requirements on some members of the assembly. I would like to say a few words about this.

First, members of the executive council are in a special position in government. Unlike other members, they are part of the executive branch of government and are thus involved in a wider range of decision-making and important matters of public law and policy. Thus it is appropriate that there be special restrictions that apply only to them.

For instance, as I have already mentioned, cabinet ministers are very limited in the types of activities they can engage in. Specifically, they cannot engage in employment or the practice of a profession. Nor, unless the commissioner's approval is obtained pursuant to section 13, can they engage in the management of a business carried on by a corporation or hold an office or directorship, unless it is as part of their official duties or is in a social club, religious organization or political party.

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Also, without the commissioner's approval ministers cannot carry on business through a partnership or sole proprietorship, although they can place this type of business in a blind trust. Ministers are also prohibited from holding and trading in securities and similar types of property unless they are entrusted to a blind trust or the commissioner approves. In addition, the acquisition of land by ministers is restricted, and there are special rules regarding contracts applicable to the executive council and its members.

The fact that there is a distinction between members and ministers is illustrated by the fact that section 6 specifically preserves the rights of members who are not ministers to engage in certain listed activities, including engaging in employment and the practice of a profession.

Second, I would like to note that the Members' Integrity Act does not have any provisions that expressly apply to parliamentary assistants. Indeed, section 19 specifically provides that the special rules in sections 10 to 18 for current and former members of the executive council do not apply to them.

Finally, there are a number of provisions in the Members' Integrity Act that apply to everyone: cabinet ministers, parliamentary assistants and members of the

assembly. Former Attorney General Ian Scott stated in the course of a discussion of the earlier legislation why rules should apply to both ministers and members of the assembly. He stated that non-ministers "...will have the same private interests, or private interests of character and dimension. Indeed, because they will be entitled under our bill to carry on businesses, it may be that they will have more private interests.

"They will be faced with the same public duty from time to time. Perhaps it will not be an obligation imposed on them in precisely the same way, but to vote on a bill, to participate in committee in moving or voting on an amendment...will put an individual member in a position of conflict of interest. This bill is designed to recognize that reality by applying the principle to all of us who come here anxious to discharge our public duty."

The following are the main provisions that apply to all members of the assembly: (1) the basic conflict-of-interest rule; (2) the insider information provision; (3) the provision regarding seeking to influence; (4) the provision that permits activities on behalf of constituents in accordance with parliamentary convention; (5) the rules governing the receipt of gifts, government contracts and the procedure on conflicts of interest. All members of the assembly are also subject to disclosure rules.

It would be appropriate to draw to your attention that these provisions, while they apply to everyone, may not necessarily apply to members, parliamentary assistants and ministers in the same way. Individuals in different positions have different responsibilities that, depending on the circumstances, might trigger a different application of the provisions.

This would be the appropriate time to make some observations concerning the issue of parliamentary convention and its role under the Members' Integrity Act. You may have observed already that the term "parliamentary convention" was not used in the predecessor legislation, the Members' Conflict of Interest Act. Indeed, the title of the new legislation was chosen to reflect that the act deals with more than issues of conflict of interest in the economic sense but includes matters of parliamentary convention.

A "convention" was defined in Hood Phillips's Constitutional and Administrative Law, sixth edition, as "rules of political practice which are regarded as binding by those whom they concern...but which would not be enforced by the courts if the matter came before them." However, where these rules have been imported into the Members' Integrity Act, they are part of the legislation and hence are statutory rules of conduct.

What constitutes the rules of parliamentary convention is not listed in the act and, unlike the common law, cannot necessarily be found in the decisions of judges. In the report under discussion, the commissioner quotes constitutional expert Eugene A. Forsey, in collaboration with G.C. Eglinton, on the meaning of "convention." He defines conventions as "extralegal rules of structure or procedure or principle established by precedent, consolidated by usage and generally observed by all concerned." This is the authors' description of how conventions come into existence:

"Conventional principles are generalizations from a mass of usages flowing down from incident to incident. These incidents in the light of common sense are usually termed precedents which over a period of time reflect common usage and are consolidated ultimately into conventions.

"A precedent may be followed on another occasion because the actions composing the precedent are seen with hindsight to be correct, that is, to have constituted a commonsense solution to a particular problem in conformity with the best general constitutional principles.

"If the reasons for regarding those actions as correct are still applicable in a like political situation, they are likely to be followed. Once a new practice is followed, a precedent is established which will constitute a usage and in due time a convention. Conventions and usages are not cast in stone...."

The intersection of parliamentary convention and the Members' Integrity Act is illustrated by Commissioner Evans's recent report concerning communications by a minister to an administrative body. As you know, the commissioner addressed the issue of whether a letter from a minister to the Health Services Restructuring Commission was in breach of Ontario parliamentary convention and hence in contravention of the act. Commissioner Evans observed that the commission was "intended to operate at arm's length from government and without political interference."

He concluded that writing the letter to the commission was a breach of parliamentary convention "...in that the HSRC was set up as an independent quasi-judicial tribunal to operate at arm's length from government. The meaning of 'arm's length' in the present context is 'without interference by members of the political party responsible for the enactment of the legislation creating the HSRC.' It is an accepted convention that there are limitations on the ability of a minister to act on behalf of constituents as far as quasi-judicial tribunals are concerned."

This conclusion emphasizes how important it is for members to understand the Ontario parliamentary conventions that govern our behaviour. More specifically, it also requires us to address the types of administrative bodies to which the convention applies. As you know, I have been asked by the Premier to meet with Commissioner Evans to clarify this very issue. I expect to meet with him in the near future. However, a few brief comments on this issue may be useful now.

The functions of public bodies may be roughly classified as legislative, administrative, judicial, quasi-judicial and ministerial. Some of these functions are carried out directly by government while others are performed at arm's length. Arm's-length bodies are established by legislation to carry out functions independently of government. Independence is the ability to make decisions free from external pressures and without fear of personal consequences, including reprisals.

The meanings attributed by the courts to the term "quasi-judicial" for administrative law purposes have been sometimes inconsistent. The term may be used in several contexts and its meaning may vary somewhat according to context.

The authors Jones and Villars discuss the development of the concept of quasi-judicial power in their legal textbook *Principles of Administrative Law*. They state:

"The phrase 'quasi-judicial' refers to discretionary powers which are essentially judicial in nature, but which are exercised by officials other than judges in their courtrooms. Historically, quasi-judicial powers have been subject to procedures which more or less resemble the formal ones used in litigation. As one moves farther away from the judicial paradigm, it becomes difficult to determine when the discretionary power can more properly be described as 'merely administrative' or 'ministerial'...."

"The concept of a quasi-judicial power takes its point of reference from the type of function exercised by a judge in litigation between two parties. The formal procedures which have been developed over the centuries by the courts epitomize 'natural justice' in its strongest form.... Many of these procedures have been made applicable to quasi-judicial functions exercised by officials who are not judges, although the exact content of the procedural requirements may differ with the type of quasi-judicial power involved."

The authors continue:

"Over the years, the superior courts have been asked to review the procedures used by other officials in the exercise of powers delegated to them by legislation. The more closely those powers resembled ones exercised by judges in their courtrooms, the more likely it was that the superior courts would require some form of curial [or courtlike] procedure to be used by the officials in the exercise of their powers; hence the development of the phrase 'quasi-judicial powers.' On the one hand, the content of the procedural requirements for exercising such non-curial powers differed enormously with the type and content of the power involved. The less the non-curial power resembled something done by a court, the less stringent was the requirement that courtlike procedures be used to exercise that power. On the other hand, the concept of a quasi-judicial power is not infinitely elastic, and at some point it becomes impossible to characterize a particular non-curial power as being quasi-judicial instead of merely administrative.... Although it was previously thought that no procedural safeguards were required for the exercise of merely administrative powers, administrative law has now developed the 'duty to be fair' in the method used to exercise even a merely administrative power."

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The features that characterize a quasi-judicial body or function are somewhat fluid and there is no closed list. However, at root a quasi-judicial body is established by legislation and exercises powers given to the body by legislation. Typically, it has the power to determine or seriously affect rights and obligations and therefore it must act fairly. Commonly, such bodies exercise powers that result in conclusive decisions and are not merely advisory, investigatory or conciliatory in character. At common law, quasi-judicial bodies are required to make decisions only on the basis of the evidence before them.

In Ontario, the Statutory Powers Procedure Act sets out minimum rules of procedural fairness that apply to a proceeding by a tribunal in the exercise of a statutory power

of decision. These rulings apply to proceedings that the tribunal is required to hold to give the parties an opportunity for a hearing before the tribunal makes a decision.

You can see that the definition of "quasi-judicial" is somewhat vague. Clearly, a tribunal such as the Ontario Municipal Board is quasi-judicial, but sometimes it can be quite difficult to determine whether a particular administrative body is quasi-judicial in character. For instance, some regulatory bodies such as the Ontario Securities Commission can exercise administrative, quasi-judicial and even legislative powers, thereby combining quasi-judicial functions with other roles.

Quasi-judicial bodies are a type of arm's-length body. This raises a point about how parliamentary convention applies generally to arm's-length bodies that, while agencies of the provincial government, were established to carry out their functions independently of the government.

It should be noted that some of the wording of the commissioner's report raises an issue about whether the principle of non-interference might also apply to other arm's-length bodies that are provincial government agencies. It is apparent that some significant issues arise in the application of the Members' Integrity Act, particularly as regards the duties and restrictions of members under Ontario parliamentary convention. These are important issues, and I am confident that we will all benefit from the discussion of them by this committee. Thank you very much.

The Chair: Thanks very much, Attorney General. Do you have an extra copy of those or do you want to share those with us?

Hon Mr Harnick: We have a copy, and I gather copies can be made and distributed. We have no problem with that.

The Chair: Thanks very much. At this point in time, Mr Silipo from the third party.

Mr Tony Silipo (Dovercourt): Minister, thank you for your presentation. I found it actually very helpful in terms of its going through and giving us both some of the background for the current legislation as well as your analysis, particularly in the latter part of your comments, in focusing on the question of "quasi-judicial." I want to start with that. First of all, just in terms of the process, you said you have yet to meet with the commissioner, I gather.

Hon Mr Harnick: No. I have spoken with the commissioner at some length. He has been unavailable and I will be meeting with him very shortly.

Mr Silipo: You made the comment that the definition, in your view, of "quasi-judicial" is vague. What would you like to see come out of your discussions with the commissioner in terms of a clarification of that? My sense would be that on the basis of the decision that we have from the commissioner, he probably would not say that this question is vague; that in fact it's quite clear in his mind that when there is a body that has such broad decisions as the hospital restructuring commission has, powers given to it, as I'm sure I don't need to tell you, by the cabinet, then it is quite clear that the nature of its decisions are quasi-judicial. So where is the confusion in your mind?

Hon Mr Harnick: If you take a look, certainly the studies that I have done in the preparation of the paper I have delivered this morning indicate how elastic the definition of "quasi-judicial function" is. I think the important aspect of what you ask is to see whether we can provide some kind of ability to assist members of the Legislature in looking at the functions of administrative tribunals to try and characterize what they do.

I think what's important in the commissioner's report is that he certainly alludes, and maybe more than alludes, to the fact that we have to be careful in terms of how we approach other bodies that are exercising functions that may not be quasi-judicial but still demand an element of independence. I think the area is very difficult to analyse. We've had writers writing texts on administrative law and attempting to categorize the function of tribunals and providing definitions that are constantly changing, and it is not an easy task, particularly for members who have to make the analysis.

Mr Silipo: So would you see that one of the things that might come out of your discussions with the commissioner would be a delineation on his part from the existing bodies that we have in Ontario, which in fact would be categorized in his view as quasi-judicial bodies and therefore would fall under the same kind of prohibitions with respect to what ministers can and can't do in terms of their contact with those bodies? Is that one of the things you think might come out of this?

Hon Mr Harnick: That might be something that can come out of it, and I think even more so, what are bodies that aren't quasi-judicial bodies that we have to be aware of, that have to entertain an independent function? I don't know that it's so simple that you can immediately make these definitions, but I think that's something that might come out of it in the discussions and deliberations we had over the period of time when we wrote the new integrity act, in which I was privileged to be involved. We had lengthy discussions about these issues and how definitive you could be. It's very difficult.

Mr Silipo: Before I get on to talking about parliamentary conventions, I want to say I appreciated your comments with respect to that. But certainly, just coming back to this issue, in the present circumstance we clearly have examples of obviously, on the one hand, Minister Leach writing to the hospital restructuring commission and thereby breaching the Members' Integrity Act; we have examples of the opposite happening with other ministers, in particular the documentation indicates the Minister of Agriculture, Food and Rural Affairs, Mr Villeneuve, refusing to write to the commission on the basis that this is a body that is at arm's length from government and therefore a body with whom it would not be proper for him to communicate. Clearly, among your colleagues there was at least some understanding by some members about the inappropriateness of writing to this body. Where does the confusion come from?

1040

Hon Mr Harnick: I don't think this is confusion that arose just in this situation. I remember during the last Parliament Premier Rae wrote to the Ontario Municipal Board in response to requests that had been made to him by constituents of his. He wrote to them to discuss a

purely procedural matter, very much on all fours with the facts of this particular case. The then Attorney General, Mr Hampton, your leader, made it quite clear that he didn't believe this was any kind of a conflict of interest at all.

It's important to note that these are not new issues. When we wrote the integrity act, we tried to do it in a way that was going to provide as much guidance as possible for members of the Legislature and we knew there were areas that you could only go so far in clarifications on. I think this is one of them. I think we have to take another look at it. Certainly, I want to speak to the Integrity Commissioner, who probably has more experience in this area than any one of us, to see if there's any way we can provide that kind of guidance.

Mr Silipo: I think that would be useful, whatever we may agree or disagree on with respect to the instance at hand.

As I said earlier, I appreciated your comments with respect to parliamentary convention. First of all, starting from your point that this is something that has been added to the legislation which wasn't there, I don't know what you make of the letter we have from Commissioner Evans. I think it is quite unusual for a commissioner to take the action of writing in response to comments made by one of the government members here, Mr Gilchrist, in which he clarifies that parliamentary conventions, while they may not be contained in any handbook, "are not 'land mines or grenades' as suggested by Mr Gilchrist. They are recognized rules of constitutional and political behaviour resulting from a mass of usages flowing from incident to incident established by precedent and common sense." It seems to me that's similar to the comments you made.

It seems to me that it goes to the point that what we have here is a piece of legislation that, as you said, is broader than the former piece of legislation. It doesn't just deal with the narrow issue, as important as it is, of conflict of interest, but does deal with conduct that is appropriate or not appropriate. As you said yourself, the rules, as a result of that parliamentary convention, apply differently to ministers, parliamentary assistants and MPPs. I just wanted to underscore that. I don't know if you have any further comments you want to make on that.

Hon Mr Harnick: One of the difficulties we all have as parliamentarians is set out in the paragraph you just quoted. I'm certainly not going to take issue with the Integrity Commissioner's characterization that conventions are not land mines or grenades. I'm not going to take issue with that at all, but what he goes on to say is, "They are recognized rules of constitutional and political behaviour...." The difficulty is that what we are talking about are potentially rules that have developed over many, many years, and the challenge for us as legislators is to be able to recognize these rules.

One of the parallels I can draw — and you're a lawyer yourself — is that when you take a look at the area of civil law, we don't expect the public to recognize all the rules of the common law as they go about regulating and organizing perhaps their business lives or personal lives, yet people breach the common law and other people sue

them. They go into lawyers' offices, and lawyers often have to look up the law to see what in fact the common law in any instance is. But it's not something that is always obvious to the individual, and I don't think legislators are really in any different position.

I think we all wrestle with the fact that we don't know exactly what all of the parliamentary conventions are that govern us. As you know, part of the battle is, when you don't know all of the parliamentary conventions, you hope you're going to recognize the issues that will tell us to go out and look for those conventions. Sometimes the issues don't jump out at you either, and it makes it very difficult to determine what is and is not a parliamentary convention, what you should and should not know.

Mr Silipo: I don't want to argue with you, Attorney General, but I can't resist making the comment that, just as the notion that ignorance of the law is no excuse applies to the general public, so it obviously applies to us as parliamentarians. Again, here in this case, there were certainly some of your colleagues who understood that it was inappropriate for them to do the very thing that Minister Leach did.

One last area that I want to just get your comments on is this question of what flows from all of this. It's my judgement that part of the reason the commissioner, when it came to deciding what penalty he should apply, made the recommendation he did is because in effect I think this is the first instance where he has found someone to have breached the Members' Integrity Act primarily under the auspices of parliamentary convention, that area. I think it's perhaps a way of him setting out for all of us his understanding and his interpretation of the act and of the rules.

Within that, as you know, there has been some difference of opinion about what the question of penalty means. As you know, we had requested that the commissioner appear in front of this committee specifically to deal with that issue, to sort it out for us so that we would hear directly from him rather than me giving my interpretation and members of the Conservative caucus giving their interpretation. Members of the Liberal caucus aren't here to give any interpretation, so we can dispense with that.

The point is that really the only opinion any of us, and all of us, would accept is the opinion of the commissioner. Of course, as you may know, your colleagues in the Conservative caucus chose not to have the commissioner here, so I was left with the only alternative, to write to him and ask him to clarify that issue. I hope you have a copy of the correspondence in response to my question; that is, that it's my understanding that the range of penalties which the commissioner "may recommend under section 34...apply to the member as a member of the assembly and not as a member of cabinet." In other words, in any circumstances where the commissioner finds "the actions of a member to warrant the application of a penalty," he does not have "the power to recommend that the member resign or be removed from cabinet. Consequently the question of continued membership in the cabinet remains a political issue to be addressed primarily by the particular minister and Premier and not by the commissioner."

I put that to him. I asked him, "Is my interpretation of the act correct?"

He writes back and says: "Your interpretation of the act is correct.

"Whether a member of the executive council remains in cabinet is not a matter for my office." The next point, I think, is really important: "It would not be correct to draw any inference that my recommendation 'that no penalty be imposed' has any relationship to a member's status as a member of the executive council."

Do you, as the Attorney General, have any quarrels with that conclusion?

1050

Hon Mr Harnick: Certainly I'm not here to in any way challenge the reasons for decision of the Integrity Commissioner. I think like any other decision that a judge or a commissioner or a decision-maker makes, it's clear on the face of that decision what the decision-maker was trying to do. I think, quite frankly, that the essence of what comes out of this decision is the ability to take a look at the reasons and, if possible, to provide a level of clarification on areas that members obviously find very difficult in terms of the guidance they get from the Members' Integrity Act. The act was written to provide clarification and as much clarity for members as we could possibly develop. Obviously this points up that there are difficulties in terms of the guidance that that act provides to individual members of the Legislature.

Mr Silipo: I may not even disagree with you on that point.

Hon Mr Harnick: I think what's important is to see if we can provide that clarification. The issue here is certainly not, at least for me, the interpretation of the commissioner's report.

Mr Silipo: No. I agree with you. We're not here to interpret the commissioner's report.

The Chair: Mr Silipo, our time is —

Mr Silipo: Let me just conclude then. I want to be very clear that on the question of penalty the commissioner has been very clear that his recommendation that no penalty be imposed has no relation to, in this case, Minister Leach's status as a member of the executive council, but that is a separate issue to be dealt with by Minister Leach and/or the Premier. I'll just leave it at that.

The Chair: At this time the government members, and we'll start off with Mrs Marland.

Mrs Marland: Attorney General, one of the questions I wanted to deal with actually has been pretty well addressed. I wanted to try to get your response on what does qualify as a quasi-judicial body. I think in your own comments to us you were laying out very clearly that none of this is a simple matter as it pertains to administrative bodies versus everything else. I think I have enough information now to discuss that further.

Since the question of penalty has been raised, just speaking as a backbencher, I find it really interesting that we have an act, whether it was the original conflict of interest act or the present Members' Integrity Act, that I personally support in terms of the necessity for us to be protected and also for the public to be protected, because I see it serving both those purposes.

The irony is that we have an example in our term of office, yours and mine, where — I don't know whether at the time he was called the Integrity Commissioner or the Conflict of Interest Commissioner, but in any case it was found of a member of this House that, to use the commissioner's wording, and I'm going to eliminate the member's name, "to continue to tolerate this member's disregard of this legislation is tantamount to a breach of the commissioner's duty as the Conflict of Interest Commissioner." So it was the Conflict of Interest Commissioner. The recommendation was that this member be reprimanded for failure to comply with section 12 of the act. The interesting thing is that, despite that recommendation, that member was never reprimanded.

We had a previous act, the conflict of interest act, which is the example I've just given you, where a penalty was recommended and no action was taken. Now we have a decision where it's very clear that no penalty was recommended. When you discuss with the current Integrity Commissioner any possible amendments to the act, how will you address this question of, when his or her recommendations as commissioner are not acted upon, what next?

Hon Mr Harnick: I think "What next?" is what this committee is really doing. The integrity act says that a response to the Integrity Commissioner's decision has to be made within 30 days and in this instance it was a decision of the Legislature to refer the matter to this committee to provide that response. I think that is something that didn't exist under the conflict of interest act, but certainly it's something I can have some discussion with the Integrity Commissioner about.

Mrs Marland: You see it as our responsibility as a committee to make recommendations in responding to this current report of the commissioner. Do you see it as our responsibility or our opportunity to make recommendations that might result in amendments to the act?

Hon Mr Harnick: I certainly think the committee has to make a decision about those kinds of things and I think that would be within your scope.

Mr Tony Clement (Brampton South): I certainly agree with my colleague Mrs Marland that perhaps one of the long-term goals of this committee very well would be to have a broader discussion about those very issues without the time constraints we are operating under today.

First of all, Attorney General, I want to thank you for your presentation. I also found it very lucid in terms of some of the issues. I did, however, want to go back to "quasi-judicial" just for a second because you laid out, I think very well, how there is a scope of definition for quasi-judicial which is somewhere between purely administrative and the more courtlike curial functions that we find in typical court situations.

One of the things that you expressed in terms of the definitions of quasi-judicial was that there was some element of natural justice. I wanted to draw that out a little bit for the record to show some of the elements typically associated with quasi-judicial and the definition of natural justice. Could you elucidate just a little bit on that?

Hon Mr Harnick: Certainly the obvious things are: Is there a commissioner or a panel making decisions? Are

they making decisions on the basis of evidence that they've heard or are they fact-finders who are going to make a decision based on submissions people make and investigations they do that are beyond just what people tell them? Are there opportunities in a courtlike process to examine and cross-examine individuals? Those are the kinds of indicia that make it very obvious that a tribunal would have a quasi-judicial function.

I think you get into an area that is much less obvious when you take a look at boards that are making decisions that have an effect or an impact on individuals, for instance, but that don't have all of those other functions. You start to say: "Is this a quasi-judicial function? Is it an administrative function? Are there instances where a board might be exercising an administrative function but it would still be unwise to communicate with them?"

Remember, one of the four principles of the integrity act that I outlined involves ensuring that members who are elected are able to look after their constituents, so that you have that as one of the cornerstones of the integrity act. It's often not obvious where to draw the line and it becomes particularly so with the minister. The development of the integrity act and the role I played in that was to take an act we thought had an awful lot to do with being more punishment oriented and provide an act that was of assistance to members, something that members could rely on, something that they could understand, something that provided succinct definitions of what a conflict is.

Every one of these issues has to be reviewed in terms of, has there been a breach of the section that defines a conflict of interest? Certainly the conflict commissioner's categorization of what Mr Leach did as not being done in anything but the best of faith and looking after his constituents I think is indicative of the fact that there was no finding of a breach of the definition of conflict of interest.

1100

Mr Clement: Again, I'm interpreting rather than putting words in the commissioner's mouth, but the fact that he decided against a reprimand and in favour of no sanction or no penalty could well be because he was breaking new ground here. This was, as you say, the first case where he was applying what could be called a parliamentary convention rather than a set law.

As Mr Silipo says, obviously ignorance of the law is no excuse in our system, but conventions are kind of funny things, and you went into this a little bit, because they are not written down anywhere. You can't go to the book of parliamentary conventions, which are based on precedent. It's only when these sorts of decisions occur — it's very similar to the constitutional reference back in 1981 where all of a sudden there was a constitutional convention that was recognized by the Supreme Court. Here we have a parliamentary convention that is recognized by the Integrity Commissioner, and that is part of his role, but sometimes it is not exactly clear when an off-the-wall, one-off case becomes a precedent. I'd like your comment on that as well.

Hon Mr Harnick: My feeling is that we can't be expected as legislators to know what might be hundreds of years' worth of parliamentary conventions that have

been adopted in this jurisdiction from, for instance, the United Kingdom, from other Commonwealth parliaments. I think the next step is to say, "We hope we will recognize that there is an issue here that should prompt us to say, 'Maybe I'd better make some inquiries about something.'"

Oftentimes, you don't recognize even the issue and it's an area that's very difficult. It adds a dimension to the integrity act that wasn't part of the original conflict of interest act. I think our ability to convey to members of the Legislature that there is parliamentary convention in certain areas is something I very much want to discuss with the Integrity Commissioner.

How do we recognize these issues? How do we know there's a convention? How do we even recognize an issue that should lead us to that conclusion? Because we at the same time have a duty, our fundamental duty as elected representatives, which is to represent our constituents, and sometimes those principles clash. How do we deal with them and how do we recognize that we may be stepping in an area where we shouldn't be stepping? Certainly what we tried to do in developing the integrity act was to provide clarity where we could because we wanted to create an act that was going to be not a landmine for members but something that was going to help members in their day-to-day functions in representing their constituents.

Mr Gary Fox (Prince Edward-Lennox-South Hastings): To me the question is, why are the ministers subject to such a strict degree of restriction when they too have to represent their constituents? The issue here today is not really Mr Leach as much as it is the integrity act.

Hon Mr Harnick: In my remarks one of the differences I pointed out was that it's the nature of the things ministers have to decide on, that it's the knowledge they carry as to decisions being made in government, that mean they necessarily have other rules. What we're really dealing with here is not questioning what the rules are; it's a question of how to understand them better, how to take some of these concepts that I can tell you legal writers have been trying to define for eons — some of the principles of administrative law and what is a quasi-judicial function and what is an administrative function and what is a legislative or ministerial function — and define those and provide some guidance for all members. That's the challenge we face.

To a very large degree, and I think it's very important to note this, the development of the integrity act was very much a result of committee work that was done and the fact that guidelines were referred to the committee, as well as the Members' Conflict of Interest Act. The committee, back in the early 1990s, took a look at all these areas and was very much at the forefront of leading to the development of a new act that included all these concepts and now our challenge is to make sure we recognize the issues that should lead us to be able to use the act in the most beneficial way for members.

The work the committee did in the past and the work that can potentially come out of this I think is very important to helping members better understand the integrity act when issues arise. That should alert us to the fact we might have an issue that we're dealing with of

parliamentary convention or that might involve an administrative tribunal and an analysis of the function of that tribunal.

As I said, I'm not so sure, and I do want to talk to the Integrity Commissioner about this, that there are not other tribunals that have a different function than quasi-judicial that we have to be very careful about communicating with in certain instances. I think, quite frankly, that involves all members of the Legislature. When any member of the Legislature is contacting a board that has to make an independent decision, be it administrative, ministerial, quasi-judicial, we have to be very careful and we have to understand that analysis. If it's something the best legal writers have difficulty understanding and can't agree on, it tells you how difficult it is for us as members of the Legislature.

1110

Mr John R. Baird (Nepean): Thank you very much for your presentation this morning. It certainly raised a good number of issues. Obviously the act deals with two things: first, trying to deal with situations where a member would be trying to advance a personal interest, and second, I suppose it's the other side of the coin, actions we would undertake as members trying to serve an Ombudsman type of role.

In terms of your meeting with Commissioner Evans, I would ask you first: What would you hope would come out of that specifically as to where we could go from here? When you look at the size and scope of government, as it's grown over the last 50 years and as has been said here this morning, parliamentary convention is not written down and it does evolve, but we now have an integrity act which is written down and is very clear and specific with its expectations.

There's a bit of a clash there and I guess each of us on all sides of the House, when we undertake Ombudsman-type roles, given that the scope of government has grown so large that those who deliver the services, those who deliver, regulate or undertake activities, whether they're certain pieces of legislation or certain programs, sometimes become remote from the people they're there to serve, from time to time has to step in and act as an Ombudsman when a constituent isn't getting the service they have every right to expect as taxpayers, whether it's that their phone calls aren't being returned or they've not being treated fairly or a whole host of things we deal with every day.

I think there has to be a degree of clarity there that's not there now so that we can each go about our activities on a daily basis with some faith that when we undertake them in good faith, we're undertaking the right course of action.

What would you hope specifically to come out of your meeting with Judge Evans?

Hon Mr Harnick: Certainly I'd like to explore the idea of how we can provide that clarity. Is there a way we can do it or is there something we can undertake that can better educate us to recognize the issues if we're not able to provide more clarification and definitions? That's something I want to explore with Justice Evans.

Your analysis of what the integrity act does was very well put in the sense that we have, on one side, issues

that deal with a pure conflict of interest that we test against the definition in the act, but we also have on the other side some restrictions on what we can and can't do, even though we're doing these things in good faith. That certainly summed up the essence of the structure or the act very well.

The Chair: We've concluded our time with respect to the questioning of the Attorney General. Does the Attorney General want to have any concluding remarks?

Hon Mr Harnick: No.

The Chair: On that note, I'd like to thank you very much for attending this morning.

Mr Clement: On a procedural point, Mr Chair: I am wondering whether I can gain unanimous consent from the members who are present here today to amend the subcommittee report, given the non-participation of the Liberals. There is a phrase in paragraph 8 which indicates that you as the Chair are "authorized to report to the House on the day specified in the July 3, 1997, order of the House after members of the committee have signed off on the report."

I am wondering whether that last phrase has to be there, because we amended paragraph 8 to make it clear that the Chair would finalize the report, in a second line, "based on motions adopted by the committee." I would argue that phrase, "based on motions adopted by the committee," is in fact the direction to the Chair and to the subcommittee, rather than the phrase "after members of the committee have signed off on the report."

I would ask whether we could have unanimous consent to remove that last phrase.

The Chair: So you're looking to delete the last sentence of paragraph 8 of the subcommittee report?

Mr Clement: I would end the sentence: "The Chair is authorized to report to the House on the day specified in the July 3, 1997, order of the House."

The Chair: You're looking to delete the phrase, "after members of the committee have signed off on the report"?

Mr Clement: Correct, sir.

The Chair: Is there unanimous consent to make that change?

Mr Peter Kormos (Welland-Thorold): It's an interesting proposition, and Mr Clement asks for unanimous consent without having done any sucking up beforehand.

Mr Clement: I'll do it after if you want.

Mr Kormos: Yes, okay. You may not want to. I understand what you're saying and doing. What happens if neither Mr Silipo nor I want to sign off on the report, notwithstanding that we've been present for the meagre two days of discussion on it? Or does our mere presence and participating in a vote, let's say, on the report, whether we're supportive of it or opposed to it, constitute signing off? That doesn't necessarily mean a literal signing off. I understand it's a broadly interpreted sort of thing. It's using a sort of turn of phrase to achieve a particular goal.

Mr Clement: I think Mr Kormos is precisely right on his last comment, and I applaud him for the way in which he, with his keen mind —

Mr Kormos: Okay, there's the sucking up; okay, here we go.

Mr Clement: I would agree with him in that it's the participation in today's activity which is in fact how the committee participates in the final report, rather than whatever it means to sign off, and I would agree with Mr Kormos on that point, so we don't need this.

The Chair: Just a point of clarification: At tab 3, the order of the House was, "That the June 25, 1997, report of the Integrity Commissioner be referred to the standing committee of the Legislative Assembly, that the committee consider the report and respond directly to the Integrity Commissioner and that the committee be authorized to meet for two days before July 25, 1997, and that the committee present its report to the assembly on the first available day that reports by committees may be received."

Mr Kormos: In view of what Mr Clement just said, I'm not sure it's necessary to delete anything from the subcommittee report. If one's presence and participation constitutes signing off, one's absence — without there being any doubt about the date and time and place of the meeting and the agenda and so on — similarly means some sort of acquiescence to the report.

This is a trite thing at the end of the day, and this really doesn't mean a lot, but here we are tinkering with the subcommittee report that's been adopted, doing that in the absence of the Liberals — and again in this instance I have no concern, but it seems to be a little bit of a dangerous precedent. You wouldn't like it being done to you, I'm sure, regardless of your reasons for not being here, whether your reasons were laudable or less than laudable.

Mr Clement: Yes, fair point.

Mr Kormos: I'm concerned about tinkering with the subcommittee report in the absence of the Liberals. I think the committee can understand that it's the view of the committee that this being a scheduled meeting and the agenda being an open one, absence from this — if I weren't here at all today, surely you wouldn't say that inhibited or prohibited the Chair from presenting the report that was arrived at without my literally signing off, and if I choose not to be here, or I can't be here without a substitute, too bad, so sad.

Mr Clement: Just to finalize my comments then, that is a perfectly acceptable alternative variation on this so long as the Chair agrees that the non-presence of the Liberal Party can be deemed to be no impediment to our finalizing the report today in terms of participation as a committee. I'm perfectly willing to accept that.

1120

The Chair: Is it an impediment to preparing or to presenting the report?

Mr Clement: I don't think it's an impediment to either. I think you have a duty to the House to report back. If this meeting ends in pandemonium, you still have a duty to report. The question is, "What is the content of the report?" and the answer to that is, "The content of the report is whatever we as a committee discuss today."

The Chair: We're talking about the subcommittee.

Mr Clement: Whatever the subcommittee finalizes is based on whatever we discuss today.

The Chair: That's correct.

Mr Silipo: I don't think we have a problem. I just want to be clear as well in echoing Mr Kormos's position. I don't think we need to get into a whole issue about the words in number 8. Unless you and/or the clerk tell us that we have a problem, I don't want to waste any more time dealing with what happens as a result of the fact that the Liberal caucus decided that rather than play by the rules, albeit they were determined by the Conservative majority, they wanted to take their marbles and go home rather than being here to do their job, or they saw that they were doing their job in a different way. That's fine, that's their decision. The rest of us are here.

My understanding is we've got an order from the House which includes coming to some conclusions or no conclusions and reporting back to the House, and that's what we need to do. In fact, the rules that we adopted through the subcommittee are really just a mechanism to allow us to do that. In my view, and I'm assuming that's what you meant when you read to us the order of the House, it can't supersede the order of the House.

The Chair: We have other members who want to speak to this. We're quite prepared to look at it and get back to you after lunch just to clarify.

Mrs Marland: If you're going to look at it and we are going to discuss it again, I'll hold my comments. Definitely there has to be a clarification about whether the subcommittee exists without its statutory quorum.

Mr Kormos: I agree we've got to speed this up. Viewers were riveted to their sets watching this Attorney General talk about integrity. We're now losing ratings fast.

The Chair: Because I'm participating? This is a motion by Mr Clement. It's on the floor. We're going to review it and we'll get back to you after the recess. At this point in time the next order on the agenda was to discuss the report.

Mr Clement: Mr Chair, do I take it then that the motion that I moved last week is on the floor?

The Chair: It's still on the floor and it can be dealt with at any time, of course. In the subcommittee report we have paragraph 7, which deals with motions to be moved. But it's your motion, whenever you want to deal with it. It can be dealt with now or it can be dealt with in the context of us proceeding and dealt with at 5 o'clock.

Mr Clement: It's the first motion on the floor; there might be others. I think Mr Silipo indicated last week that the NDP might have a couple of motions dealing with these issues. I think my motion is the bedrock of what this committee must accomplish today, which is to accept the report of the Integrity Commissioner.

We've now heard from both Minister Leach and the Attorney General about some broader issues which it might behoove this committee at some point in the future to concern itself with, but at the very least, in order to satisfy the requirements of the House to the best of our ability, from what I've heard, and I think I can speak for at least some of the members on this side, we accept the report of the Integrity Commissioner, we accept his findings, we accept his sanction of no penalty being imposed and we want that to be reported back to the House as the committee's report.

The Chair: Motion number 1 is on the floor. I think everyone has a copy. Is there any further discussion on this motion?

Mr Silipo: We're not doing the half-hour rounds in discussing this?

The Chair: I thought we had already done our two rounds.

Mr Silipo: That's fine, then.

The Chair: We adjourned last time, from my reading of the Hansard, until we could meet with the Attorney General.

Mr Silipo: We're now into debate and discussion based on the motion that's in front of us?

The Chair: That's correct. Did you want to say something, Tony?

Mr Silipo: Let me just say, if you look at the words that are here in the motion from Mr Clement, it's very difficult to be opposed to what is here. There may be some quibbling with respect to the latter part in terms of the recommendation that the Legislature adopt the report. I hear what Mr Clement is saying in terms of his wanting to indicate that the committee and the Legislature accept the report. That's fine. I don't have any particular problem with that. It might even be appropriate for us to indicate in some way that we take note of the report, and if this is the way to best do it, so be it.

What troubles me is that the motion as it is here does not address the fundamental question that I see, which is: So what? What happens? You heard me make the point this morning and you heard me make the point last week when we met that the issue, as I see it, is not just what the commissioner found. What the commissioner found, quite frankly, is not for us to dispute. What the commissioner found is really beyond the realm of our quibbling with it. We may want to probe it so we can understand it better; we may want to probe it also so we can learn from it; we may want to probe it so we can ensure that everyone is clear about what the rules are. But we're not probing it so we can debate whether we agree with it or not. The law says in this instance we have no choice but to accept the report.

The report deals with the question of, so what? Or, put more nicely, the question of penalty, only to some extent. Without belabouring the point, I need to underline again that the Conservative members on this committee have refused to have the commissioner be present and address very clearly that issue of penalty.

Had he been here, he would have been able to say, as he said in the letter he sent to me in response to my letter to him, that the question of penalty that he is authorized to address under the legislation, under the Members' Integrity Act, deals with four possible conclusions that he can come to, which range from no reprimand all the way to recommending that the member's seat be vacated, and a couple steps in between. But in each of those they deal with the member as a member of the Legislative Assembly. They do not nor cannot deal with the issue of the member as a cabinet minister.

The problem I have with Mr Clement's motion is that it doesn't address that latter issue. Quite frankly, if Mr Leach were not a minister, we wouldn't be sitting here. The reason he was found to be in breach was because as

a cabinet minister he breached parliamentary convention. Yes, as an MPP he has certain responsibilities, but even as the Attorney General clearly said to us, as a cabinet minister he has additional responsibilities. Put another way, as a cabinet minister he has different limitations, some may argue more stringent limitations, on what he can do. Interestingly enough, the commissioner, in his letter to the committee, says in his view that isn't the case; in fact the minister has — where does he say it? He says:

“Ministers are not subject to any restrictions which would prevent them from adequately dealing with their constituent problems with the provincial agencies, boards or commissions. Unlike government backbenchers and opposition members, who may appear personally before such bodies (unless prohibited by statute or convention), the process by which ministers may assist their constituents” — this is important — “is by communicating with the responsible minister who, if he or she considers the matter to be proper, will refer it to his or her deputy minister (or the person delegated by the minister to deal with such matters), for consideration and reply.

“In fact, constituents of ministers are in a more advantageous position than others if the proper procedure is followed.”

The commissioner doesn't say that ministers can certainly circumvent the law by going to the appropriate minister. In this case Minister Leach could have gone to Minister Wilson. What he says is that's the proper route, because then the minister responsible for the agency, board or commission is in the best position to tell the minister making the request whether the request is appropriate or whether it's inappropriate for the minister to respond, which is, according to the commissioner, what the Minister of Health would have or should have said had Mr Leach approached him. We don't know if that happened, but it's beyond our scope to get into that in terms of what happened, because that's revisiting the situation.

1130

The point is that the commissioner is clear in telling us here and in telling us in the report — because I know that even when the Premier dealt with this issue, he chose only to quote about half a sentence out of the full sentence that the commissioner made on this. The Premier gives the impression that what the commissioner is saying is that it's okay for one minister to talk to another minister and thereby get around the process of going directly to the agency, board or commission. The commissioner isn't saying that. He's not saying that one minister should go to the other in order for you as a minister to circumvent the process. What he's saying is that's the proper channel so that the minister responsible for the agency, board or commission can then give some guidance to the minister-member making the request about what the proper procedure is.

In this case, again I want to underline according to the commissioner, the response that would or should have come from the Minister of Health, had Minister Leach approached him, would have been to say: “No, this is a quasi-judicial body. It's an independent body that you and I as members of the same cabinet have agreed to charge with a certain responsibility. We've transferred

responsibility from the cabinet to this body and therefore you can't now meddle in the decision-making.” That's really the issue here.

When it comes back to the question of therefore what is the appropriate consequence, it's clear that from the perspective of the commissioner, he has come to the conclusion, we can surmise, as to why he made the recommendation on penalty that he did. I have put forward the notion, and Mr Clement commented on it as well, that perhaps one of the reasons the commissioner has in this instance, within his powers — I want to continue to underline that — of applying the penalty, recommended no reprimand is that the basis for the breach was breaching parliamentary convention. It's new ground on a new piece of legislation and perhaps he didn't want to go any further than that. He wanted this to be, in effect, a serious warning, not just to Mr Leach but to the rest of us who are either in cabinet or perhaps aspire to be.

The point is that does not in and of itself finish with our responsibilities. That doesn't deal with what our responsibilities as legislators are. I want to remind members that our responsibility is not just to respond to the commissioner, but also to report back to the House. It is in effect for us to take note of what happened and, yes, deal with the commissioner's report. But I think it's also appropriate in doing that at the very least — I would argue to go further and point out that on the issue of penalty there has got to be more that has to be done in this case, but at the very least to point out that on this question of penalty this muddling that the Premier has chosen to bring about needs to be sorted out.

We have heard very clearly now, albeit by correspondence because the government members chose not to hear it directly from the commissioner, that it would not be correct to draw any inference that the commissioner's recommendation that no penalty be imposed has any relationship to a member's status as a member of the executive council. In terms of any motion or any report that we make back to the House, I think it's incumbent upon us that we put that issue squarely in the report and squarely in the recommendations that go forward.

I don't have the exact words but after lunch I'll be bringing back some words that will in effect just add those to the motion Mr Clement has made. I hope they will be acceptable to the government members, because making a finding is really doing our job, as I think we have, albeit indirectly, albeit, as I say, through correspondence rather than having the commissioner here.

But I think it's important and crucial that that piece of information be there so we as a Legislative Assembly can then say that this is the range of issues in front of us: Yes, we've dealt with the commissioner's report, we adopt the report, we accept the report, we take note of what the commissioner has found, but there still is an issue beyond that report of this minister's particular conduct, not just in this instance but also because this is the third time he has been found wanting. That raises an issue for him and for the Premier, in my view, about his continued membership in cabinet. It's not an issue for me to decide, it's not an issue quite frankly for any of you to decide, but it is an issue for Mr Leach and Mr Harris to address.

At the very least, we saw when Mr Leach was here last week that he acknowledged, finally acknowledged, contrary to his position in the House and contrary to his public position, to my knowledge, until last week when he appeared before us — he was saying before that the whole issue of penalty was wholly contained in the commissioner's report — he finally acknowledged that in effect the question of his continued membership in cabinet has nothing whatsoever to do with the commissioner's report but is an issue for him and the Premier.

Mr Allan K. McLean (Simcoe East): On a point of privilege, Mr Chair: I would ask the member to indicate the wording that he would like added to the motion that is on the floor, the precise wording that you would like to see added to it, so that over lunch I would have an idea of what to consider.

Mr Silipo: I can tell the member opposite that what I will be doing is looking very much at the words that are in the letter from the commissioner, so if he wants to take a look at that letter — I believe he has a copy of it — he will see the words that I will bring forward as a motion to attach by amendment, if that's the appropriate way, to what Mr Clement has.

The Chair: That's the July 17 letter?

Mr Silipo: That's right. I think at the very least that's something that needs to be in the report.

The Chair: That's the response to your letter?

Mr Silipo: Yes. What I will be looking to add further to that are simply words that indicate that therefore Mr Leach's continued membership in the cabinet is an issue that he and the Premier must address.

The Chair: Mr McLean?

Mr McLean: Thank you.

The Chair: Mr McLean has indicated he's satisfied, Mr Silipo.

Mr Silipo: The last point that I just wanted to make on this was in fact on that issue, with respect to saying that Minister Leach at least seems to me to now have accepted that the commissioner's report does not relieve him of this additional issue of responsibility of determining whether he will continue to be in cabinet or not. We heard in fact as much from him. He may have even contemplated — I don't know; I don't want to put words in his mouth — the possibility of resigning. But I took from what he said to us that the Premier made it very clear to him that the Premier wasn't interested in looking at any resignations, I suspect because if he were looking for one here he would also have to deal with resignations from the two other ministers who also similarly breached the rules by writing to the same body, and that's Ms Cunningham and Mr Runciman.

But I think there still remains that very basic issue. At the very least Mr Leach has acknowledged that's an issue that's still there for him to deal with. I will want to hear from the Premier whether he now accepts the words of the commissioner that indicate very clearly that the question of penalty as it relates to Mr Leach's continued membership in cabinet is still very much an open issue for him to have to address as the Premier, and ultimately as the person responsible for who is in cabinet and who isn't in cabinet.

He can't hide any longer, as he has up until now, or has tried to up until now, behind the commissioner's report and say, "I accept the report and therefore I have to do nothing further because the commissioner has recommended that no penalty be imposed." The commissioner is making it very clear that by saying that no penalty be imposed, he is not at all dealing — because he can't, not because he doesn't want to but because he can't under the law — with the issue of Mr Leach's membership in cabinet. That is an issue to be addressed by the Premier and obviously by the minister himself.

That's very much something that I think as a bare minimum needs to be added to this motion. I hope my colleagues opposite will find that approach acceptable, because I think that if we don't do it, we will not have been doing our job sitting here for this day and a half, two days I guess by the time we finish this afternoon.

1140

Mrs Marland: I would like to say in response to Mr Silipo that the matter that has been referred to this committee is very clearly defined. We may have members of this committee who have other concerns. I think we all have a concern — and it has been expressed by both the opposition members and those of us as government members — about something as important as the definition of a quasi-judicial body, the definition of which bodies in the ABCs — the agencies, boards and commissions — of government that any of us, whether we be in cabinet or out of cabinet, as backbenchers in the government or indeed in the official opposition or third parties in this Legislature, may legally, under the Members' Integrity Act, advocate to for our constituents.

That matter I've just outlined is very important for all of us no matter where we sit in the chamber, but that matter has not been referred to us. When I asked the Attorney General this morning if he saw the matter of a definition as something that we could recommend as a committee to be part of the discussion between the Attorney General and the Integrity Commissioner in their future discussions, he suggested that yes, it might be. In thinking about it afterwards, I thought yes, it might be, but not at this particular hearing, not at this particular committee session.

The Legislative Assembly committee does have a very important mandate all the time to deal with matters of concern to members of the Legislative Assembly. But the matter before this committee today and on the previous day — remember that we were only given two days to consider that matter — is solely the report of the Integrity Commissioner dealing with one issue. It's very clear to me, when you look at the referral to this committee being to consider the report and respond directly to the Integrity Commissioner, we have to consider the report. It doesn't suggest that we consider the report and then look for things that are extraneous to the report and may, from any individual member's point of view, be very important as an outcome of that report. We can only consider what is in the report.

I find it really interesting when we talk about whether or not the Integrity Commissioner indeed had another meaning when he wrote his decision, "I recommend that no penalty be imposed," because when Mr Silipo wrote

in his July 16 letter to the Integrity Commissioner to ask for the clarification, I don't think he probably could have anticipated any other reply than that which he received, because the Integrity Commissioner is bound by the act. I would ask you to turn to page 38 of the act and read section 6, because section 6 starts to lay out definitions. I suppose they're definitions of findings of the commissioner and where the commissioner has certain findings where a penalty can be imposed. It's not up in the air that the Integrity Commissioner can make this finding and impose that penalty; it's very narrowly scoped what penalty the commissioner can find in regard to what conclusion he makes.

If you read down page 38 in those sections, you'll find that under other findings he still can only recommend that no penalty be imposed. That's set out in the act; that's not in the head of the commissioner. So if you're asking whether the commissioner could have made any other finding, then I simply don't follow your argument. In item 6 he in fact is saying, "If the commissioner determines" —

Mr Silipo: Come on, even Al Leach has accepted it, Margaret; surely you can if he can.

Mrs Marland: Did I interrupt you?

Mr Silipo: I'm sorry.

Mr Kormos: I saw the looks you were giving him.

Mrs Marland: You were using some literary licence when you were saying a few minutes ago, Mr Silipo, what Mr Leach has in fact said.

Mr Silipo: I'll quote from Hansard this afternoon.

Mrs Marland: Yes, please do. Mr Leach said he has accepted that he made an error. That's what he said.

Mr Silipo: He said a few other things.

Mrs Marland: He said, "I accept that I made an error." The Integrity Commissioner has —

Interjection.

The Chair: Can we just have some order. Mr Silipo, you had your chance, and you'll have your chance this afternoon if you have an amendment to the motion.

Mrs Marland: The Integrity Commissioner also found that he had made an error. He found very clearly under section 6 of the act "that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith." That's what he found: "an error of judgement made in good faith." In fact, he added another sentence: "...an error in judgement, based on his limited experience in government..."

Mr Kormos: He didn't want to say "stupidity."

Mrs Marland: I'm not sure that the public gallery present is allowed to interpret comments made by members of this committee.

Mr Kormos: On a point of order, Chair: The public can hear our laughing. That is, as we all know, a physiological response. It's as much out of our control —

The Chair: That's not a point of order, Mr Kormos. Mrs Marland has a right to present her position. If the member will listen to it, we can get ahead.

Mrs Marland: In Commissioner Evans's final decision he says:

"I am of the further opinion that such action was an error in judgement, based on his limited experience in government, but made in good faith in the mistaken belief that he was entitled to do so.

"Accordingly, I recommend that no penalty be imposed."

This committee's mandate is to review that report. That's his finding. We are also bound, I would suggest, by the wording in the act itself. I will read where in the act for the benefit of those people who are not familiar with the act, so they can understand where in the act Mr Justice Gregory Evans's conclusion comes from, because in item 6 it says, "...or an error of judgement made in good faith, the commissioner shall so state in the report and shall recommend that no penalty be imposed."

It can't be any clearer. The language doesn't say, "may so state," or, "may recommend;" the language says "shall." Once the commissioner finds that "an error of judgement made in good faith" has been made; he then "shall so state in the report," which I respectfully suggest he has done, "and shall recommend that no penalty be imposed."

There's no latitude here. There's no other interpretation under the act. There's no other interpretation that we as members of this committee can make about what the responsibility is that we have here today on this committee. That's why the motion moved by Mr Clement, in my opinion, is the only motion we can make. We have considered in its entirety the report made by the commissioner as it was referred to this committee, and in my respectful opinion I would suggest that to go any further or to make any further amendment to the motion that's on the floor is something that's totally out of order within the parameters of the matter that was referred to us.

If at a further meeting of this committee any time in the future one wishes to bring up other matters pertaining to those other issues, then that's for the committee, because the committee orders its own business. So we can discuss other matters in the future, but we can't expand this committee today to cover those areas that were not referred to us, quite simply.

Mr Kormos: What's interesting is that new matters have arisen since last week; in particular, one letter that was a response to Mr Silipo's inquiry of the commissioner and yet another letter, an unsolicited one, that was offered up by the commissioner as a result of him having reviewed — I almost said "him reviewing," but that would have been bad English because it would be "he reviewing" — the transcript. The commissioner took it upon himself to correct Mr Leach and indeed the member for — well, Mr Gilchrist. I don't know his riding; all I know is that his election made a whole lot of Canadian Tire employees very happy. Think of Mr Gilchrist as your store manager.

The Chair: Mr Kormos, he's not here today.

Mr Kormos: I know he's not here. I wish he was, because I wanted to read and I will read on to the record the letter from the commissioner. He not only corrects Mr Leach and Mr Gilchrist in this comment that Mr Leach made about how if cabinet ministers aren't allowed to do what he did, there'll be two levels of representation in the province and especially all the more so after the next government is elected because there will be fewer members, 40% will be members of the executive council. Judge Evans corrects it.

Then he goes on and corrects Mr Gilchrist, who made reference to that in his arguments. Then he goes on to chastise, it seems to me — that's my word; he doesn't say "chastise" — Mr Gilchrist for Mr Gilchrist's criticism of parliamentary conventions. Mr Gilchrist talked about them as "land mines or grenades," as if they're tricks lingering there so that people can stumble over them.

The members of the government caucus on this committee got caught with their trousers at their ankles, and it's not an attractive sight. They're the ones who persisted in maintaining that Judge Evans's comment that no penalty be imposed was Mike Harris's justification for not dealing with the issue of whether or not Mr Leach should remain in cabinet. From day one they relied on that. Mr Clement last week suggested that there was a mere difference of opinion based on his acknowledgement of differing interpretation by him and government members of "no penalty be imposed" and the interpretation of the opposition.

No wonder the government didn't want the commissioner to come here, because I suppose it's a little less embarrassing to receive this letter than to have the commissioner here saying: "What are you guys talking about? It has nothing to do with" —

The Chair: Mr Kormos, we are at recess time, so I'm going to recess to 2 o'clock.

The committee recessed from 1155 to 1405.

The Chair: The committee is in session. I'd just ask Mr Kormos if I could make the ruling. We were asked by Mr Clement in the morning session for unanimous consent to deal with a part of paragraph 8 of the subcommittee report. What he wanted was the deletion of the words "after members of the committee have signed off on the report." In the ensuing discussion, various members made submissions on the meaning of these words and I'd like to thank them for their submissions.

In my view, these words have to be read in light of the July 3, 1997, order of the House under which this committee is operating. That order reads as follows:

"That the June 25, 1997, report of the Integrity Commissioner be referred to the standing committee on the Legislative Assembly, that the committee consider the report and respond directly to the Integrity Commissioner and that the committee be authorized to meet for two days before July 25, 1997, and that the committee present its report to the assembly on the first available day that reports by committees may be received."

The order I have just read is paramount in the event that some interpretative conflict arises between it and the subcommittee report. There is no conflict right now, but the committee should know that committee members will be afforded an opportunity to sign off on the report, that signing off on the report does not necessarily mean that the member agrees with the content of the report, and (3) that the sign-off mechanism is not a "procedural" condition precedent that can prevent the report from being presented to the House pursuant to the July 3, 1997, order of the House.

That's my ruling. Would the member who proposed unanimous consent wish to proceed or do you wish to withdraw it?

Mr Clement: With that clarification I'll withdraw.

The Chair: On that basis we'll return to Mr Kormos, who had the floor before we broke.

Mr Kormos: If I may, I want to speak further to the matter. However, Mr Silipo has an amendment to move and I would be prepared to yield the floor to him subject to my regaining it after he's moved the amendment and spoken to it, if he wishes, because it would be useful then for me to speak to all these things at one time instead of having to speak to the motion and then having to speak again to the amendment, which could use up a whole lot of time.

The Chair: We'd require unanimous consent for that. Is there unanimous consent for Mr Kormos's request?

Mr Silipo: It's a reasonable approach.

The Chair: Mr Silipo, are you in agreement with that?

Mr Silipo: Yes, absolutely.

The Chair: Does everyone have a piece of paper from Mr Silipo with respect to his motion? Mr Silipo.

Mr Silipo: It's actually a two-part amendment, and I leave it in your hands as to whether you wish to deal with these as two separate amendments or as one.

The Chair: We should deal with them separately.

Mr Silipo: The first, then, would be that Mr Clement's motion be amended by inserting after paragraph 3 — and by paragraph 3, I'm talking about the paragraph that reads, "The commissioner further found that the action was made in good faith in the mistaken belief that he was entitled to do so. He recommended that no penalty be imposed." Right after that paragraph I would move that we insert the following paragraph:

"The commissioner has since clarified that:

"Whether a member of the executive council remains in cabinet is not a matter for my office. It would not be correct to draw any inference that my recommendation 'that no penalty be imposed' has any relationship to a member's status as a member of the executive council."

The second amendment, then, would be to amend Mr Clement's motion by adding after paragraph 6, that is, at the end of his motion, the following:

"The committee also recommends that Minister Al Leach and Premier Mike Harris take note of the commissioner's clarification with respect to Minister Leach's continued membership in cabinet and respond."

The Chair: For clarification, that second motion is at the end of this report, because they're going to be renumbered based on the motions.

Mr Silipo: Yes. The second one would be at the very end of Mr Clement's motion and the first one would be halfway through that after the third paragraph. The reason I suggest that the first one be up there — I'm quite happy if you want to put both at the end — is because it seemed to me to follow more logically given that the previous paragraph, paragraph 3, talks about what the commissioner recommended with respect to penalty.

Mrs Marland: On a point of clarification, Mr Chair: Do you want this worded exactly as it is without saying "respond to" whom? When I read this the question is, respond to whom?

Mr Silipo: I'd certainly be open to any suggestions. I initially thought "respond to the Legislative Assembly," but I left it open because I think there are a number of ways in which the Premier and the minister could respond, certainly I think it would be appropriate, to the

Legislative Assembly, but to the public in general in any number of ways. If you want to add the words "to the Legislative Assembly," I certainly would be happy with that.

The Chair: Is that an amendment to the amendment?

Mrs Marland: Are you asking me?

The Chair: You asked for a point of clarification.

Mrs Marland: No, I was asking Mr Silipo to clarify whether that's exactly as he wanted it.

The Chair: You're not looking to amend it at this point.

Mrs Marland: I'm not looking to amend it. I just wondered even if grammatically it was correct.

The Chair: Okay, but you have your clarification?

Mrs Marland: Thank you. I have my clarification.

The Chair: Okay. Sorry. Go ahead.

Mr Silipo: I'll be able to speak to this later. I'd be happy just to yield the floor back to Mr Kormos.

The Chair: Okay. So at this point we are going to deal with each motion separately. That's what I indicated, so we're going to deal with the first motion to amend.

Mr Kormos: Quite right, but when I'm speaking of these I'm keeping in mind the fact that there's another amendment and that there's a main motion.

The Chair: Try to allot your time accordingly.

Mr Kormos: Let me tell you: One of the reasons why it's important that the first amendment go where it's indicated is because the person who drafted the motion — Mr Clement presented it — used the phrase, "He recommended that no penalty be imposed." That's all designed to reinforce that now shattered theory — well, it is. The government from day one was trying to talk up the fact that the commissioner himself said that Mr Leach shouldn't be thrown out of cabinet; he said that no penalty should be imposed, and Mr Leach insisted in the House day after day after day, as did the Premier, that that's what Judge Evans meant, and the statement here, "He recommended that no penalty be imposed," is designed to convey that impression.

Mr Clement, you said as much last week. You spoke on behalf of your caucus and somebody gave them the marching orders to delete Judge Evans, the commissioner, from the list of witnesses. I've got a feeling you knew then that you might be wrong, and I'm being generous when I put it that way. I suspect you knew then that you might be wrong, and here you are; you've been exposed — not so much you. I take no quarrel with your being here putting forward that line, because your career is on the incline and I understand that and I look forward — well, no, I do.

You're a lot brighter than some of the other members of cabinet currently, a whole lot brighter. I have no quarrel with the proposition that you will not end up before the Legislature or before a committee saying, "How was I supposed to know that was a breach of my ministerial responsibility?"

This has been Mr Leach's new tack: "These rules are just oh so confusing, nobody could begin to understand them in a million years. By God, we're mere mortals." You're not on the local library board any more, where you're a volunteer and where you can be forgiven some lack of understanding of, let's say, the minutiae of the rules.

Mr Leach is in the big time. He's making the big bucks. I find it pretty absurd for him to come to this committee or for him to state anywhere else, "I didn't know I wasn't supposed to write to him." There are a few observations — you ask somebody. The ministries are full of high-priced help, all of whom are there, in most instances, to try to keep their minister, her or him, from the land mines and from the bogs. You ask.

What I found interesting was that Mr Leach said, when asked by me last week, did he make any inquiries, did he ask anybody for advice about this, "Well, it's irrelevant whether I did or not." That leads one to one of several conclusions: Maybe he didn't ask anybody, in which case he's really stupid for having ventured where angels fear to tread; or he did ask somebody and either followed or ignored that advice. If he ignored the advice, which if he ignored it would have been, "Don't write even as an MPP because it violates the integrity act," then he's still stupid. If the advice that he got was, "No problem as long as you use your MPP letterhead," look, at that point I'm far more generous to —

The Chair: Mr Kormos, just out of parliamentary privilege and decorum, do you want to not get personal with respect to your comments and try to be a little bit more considerate?

Mr Kormos: I'm speaking of the conduct, not of the person; of the actions.

The Chair: I don't think you are.

Mr Kormos: I want to clarify that.

The Chair: Why don't you just be a little bit more generous.

Mr Kormos: Look, what would you call a person of high position — and Mr Leach knew there were some sensitivities, because he was careful to explain to us here that he chose to do it on his MPP letterhead, so he knew there was something going on there, and also that it was merely a procedural issue. What he wanted to do was get a letter out to the restructuring committee so he could show his constituents — so he could send ccs of it to 600 constituents who had made inquiries and requested an extension of the time.

As I suggested last week, he probably knew the recipient of that letter dismissed it, saying: "Oh, here's just another — Al Leach, cabinet minister. We've got a job to do. He's irrelevant." We talked about that last week. His motive was to get a letter out so he could distribute it to 600 constituents. He knew there was something delicate here, he knew there was something sensitive, because he specifically didn't use cabinet ministry letterhead. Let's cut the baloney here. When you're a cabinet minister, you use that letterhead as often as you can.

Mr Baird: I wouldn't know.

Mr Kormos: You may have a chance. You use it as often as you can. It's embossed, it's a little bit heavier paper and it has, in the mind of most people, a little bit more weight. He didn't use it and he clearly spoke in his letter only to the matter of prolonging the time frame for submissions. He addressed his mind to it. He was thinking about the sensitivity of it.

As I said, he either didn't ask for advice, and people can characterize from their own point of view what kind

of person that would make him, or he asked for advice and ignored it, and once again people can in their own minds formulate an opinion about what kind of person that is. We're talking about somebody here who's a mickey short of 40 ounces. People can form in their own minds an opinion as to what type of person would do that. Or he took advice and got bad advice. That's what I think a lawyer like Mr Clement or any other number of lawyers might call due diligence, and that seems to me to be a perfectly valid explanation and far superior to one that says, "How am I supposed to understand the rules?"

There are books. Reference has been made to Forsey's writings, available in the library — I checked; Rod Lewis's book, the former Clerk's, published I think around 1987-88. You're not familiar with that one, Chair? It's remarkable.

The Chair: I'm just listening, Mr Kormos.

Mr Kormos: Chair, I saw the quizzical look on your face. Get it out of the library: Roderick Lewis QC.

The Chair: I've been quizzical before but not with books.

1420

Mr Kormos: A 30- or 40-year Clerk of the House just prior to the present Clerk, his father was a Clerk who preceded him, and if any MPP has been elected here for the first time and not read the Lewis book, then they're negligent, quite frankly, because that's the primer for MPPs and it's readily available.

There are all sorts of people around here who are prepared to be generous with advice. Sometimes the advice is worth just about as much as you pay for it, but by and large there are people here with a great deal of skill. In a minister's office there are highly skilled, highly paid people — they're called deputy ministers and assistant deputy ministers — who are accessible to a minister and available.

There is also the commissioner himself, who has been extremely generous and never, so far as I'm aware, denied anybody an opinion as to whether something violates the act, and that's not the final word, because he's not forbidding you to do it. You can then do it at your own risk.

As I said last week, it's like the little boy who wet the bed. In the morning he dummies up. He doesn't know where that came from. Right? Al Leach comes here to the committee like that kid: "I didn't know there was a rule against it." Other people knew. Noble Villeneuve knew that it was a violation of the standard. It seems that Jim Wilson knew, the Minister of Health, because he said as much prior to Mr Leach writing his letter. Mr Leach cries about, "Oh, cabinet ministers then can't do" — just in the same way that Speakers can't do all the things that an MPP can. They can't engage in debate in the House and undoubtedly have to fight the accusation from their opponents in the next election that, "You've been less effective than you could have been," yet there is no shortage of people who want to become Speaker.

Let's put on the record first of all about the "no penalty," because the government members have been using, indeed abusing, that comment from Judge Evans in his commissioner's report from day one. It would be nice to hear them, fess up, even a cursory acknowledgement:

"Okay, we were wrong on that one. It didn't have anything to do with whether Leach should be kept in cabinet."

July 17, 1997, Judge Evans writes to Mr Silipo:

"I am in receipt of your faxed letter dated July 16th with respect to section 34 of the Members' Integrity Act, 1994, and wish to advise that your interpretation of the act is correct.

"Whether a member of the executive council remains in cabinet is not a matter for my office. It would not be correct to draw any inference that my recommendation 'that no penalty be imposed' has any relationship to a member's status as a member of the executive council.

"Yours truly,

"Gregory T. Evans."

So it is not correct, members of the Tory caucus, to suggest that Judge Evans's commendation that no penalty be imposed was any comment whatsoever on whether this conduct would or should jeopardize Mr Leach's status as a cabinet member. You were incorrect when you said so last week; Premier Harris was incorrect when he said so in the House; Al Leach was incorrect when he said so both in response to questions during question period and in the course of any number of interviews during scrums by the press. You were wrong. There's nothing wrong with that. You had your best kick at the can and you knew that it was going to come out sooner or later. You got caught. So be it.

The other, more interesting correspondence that flowed from last week's meeting is the letter from Judge Evans, and I'm going to be really careful, because I don't want him a week from now writing a letter about me and things I have said. It's a proactive letter. He's not responding to any correspondence that has been written to him.

Mr McLean: Is it confidential?

Mr Kormos: No. It's dated July 17, 1997. It's addressed to the clerk of the committee. It says:

"Dear Mr Sibenik:

"I feel compelled to correct a factual error which the Honourable Allan Leach" — let me just interject here. I mean, here's poor Judge Evans saying, "Oh, here we go again." How many times is he going to have to review Mr Leach's conduct? I suppose that depends on what the Premier does over this summer break.

"I feel compelled to correct a factual error which the Honourable Allan Leach made in his presentation before the standing committee of the Legislative Assembly on July 15th (Hansard, page 545) and which Mr Gilchrist adopted in his presentation (Hansard, page 559). Mr Leach stated that '...roughly 40% of the population will have one level of advocacy from their member and 60% will have another.'

"The present 28 parliamentary assistants are not members of the executive council, which is presently comprised of 20 members, and they are not subject to the special provisions as set out in the act applicable to ministers. In addition, and for further clarification, section 19 states: Sections 10 to 18 do not apply to parliamentary assistants or to former parliamentary assistants, as the case may be.'

"These are sections which apply to members of the executive council only.

"Ministers are not subject to any restrictions that would prevent them from adequately dealing with their constituent problems with the provincial agencies, boards or commissions. Unlike government backbenchers and opposition members, who may appear personally before such bodies (unless prohibited by statute or convention), the process by which ministers may assist their constituents is by communicating with the responsible minister who, if he or she considers the matter to be proper, will refer it to his or her deputy minister (or the person delegated by the minister to deal with such matters), for consideration and reply.

"In fact, constituents of ministers are in a more advantageous position than others if the proper procedure is followed.

"All agencies, boards and commissions fall within the jurisdiction of a particular minister. For Minister A to deal with an agency, board or commission which falls within the jurisdiction of Minister B without consulting Minister B is an affront to Minister B; a violation of his territorial jurisdiction; and contrary to accepted parliamentary convention.

"A minister is restricted in the type of inquiries which may be made of the agency, board or commission under his or jurisdiction, ie, inquiries as to the status of a particular matter, policies of the agency and whether the proper procedures of the agency were followed in dealing with the matter. A fortiori a request from a cabinet colleague must face the same criterion.

"Parliamentary conventions are not contained in any handbook, but they are not 'land mines or grenades' as suggested by Mr Gilchrist. They are recognized rules of constitutional and political behaviour resulting from a mass of usages flowing from incident to incident established by precedent and common sense.

"I trust that the above information will be of assistance to the committee and appreciate the distribution of this letter to the members of the committee.

"Yours very truly,

"Gregory T. Evans."

I wanted those to appear in the Hansard transcript of this hearing.

We saw this incredible transformation of Mr Leach from being protected by Judge Evans — "After all, Judge Evans said I shouldn't be penalized; he said so himself, which means that my status in the cabinet cannot be questioned" — to, "How was I supposed to know I was breaking the rules? The rules are so bizarre."

When you go into cabinet, you go to special lengths to make sure you know what the special rules are. Once again, there are all sorts of resources, and there are but a handful of cabinet ministers I'm aware of who wouldn't be capable of absorbing that information; most of them are.

You notice that Judge Evans refers with some particularity to Mr Leach's business background. Commissioner Evans characterizes it as a "system based on power and control...authoritarian." He's talking about Mr Leach's role with the Toronto Transit Commission here in Toronto. He makes reference to the fact that Mr Leach held several important and high-profile positions in the field of public transportation and is well respected in the business community. I've got no quarrel with that.

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Mr Leach wants to play ill-informed when it suits him, when it's convenient to him. He obviously has the capacity to have read the resources that are available, to have read any number of articles, any number of books that are available that talk about ministerial responsibility. He's perfectly capable of having made appropriate inquiries.

Maybe he got advice from Jim Wilson, because you notice he didn't want to name the person, if any, that he spoke to. He said it was irrelevant. Maybe he went to Jim Wilson. Maybe Jim Wilson said, "Are you nuts? You can't write to the hospital restructuring commission," and Leach said: "But Jeez, you don't understand, Jim. I've got 600 constituents who called my office wanting me to do something. They're going to think I'm some sort of lame duck in the Premier's cabinet. They're going to think that perhaps I'm destined for dismissal because I screwed up on my staff person calling the law firm —"

Mrs Marland: Mr Chair.

The Chair: Yes, Ms Marland.

Mrs Marland: I know it isn't in order to impute other members' motives and I'm wondering if this diatribe coming from the member for Welland-Thorold is in fact doing that very same thing in relation to his suggestion about a hypothetical conversation that took place between Minister Leach and Minister Wilson. I'd ask you to rule on that.

The Chair: I'd just say to Mr Kormos, we've heard the testimony and we've questioned Mr Leach. You had an opportunity to try to get into his mind.

Mr Kormos: I was scared, Chair. I wasn't going there alone.

The Chair: We also heard from Mr Harnick today, the Attorney General. I think you should tread a little bit more carefully with respect to what may have happened, especially since you had an opportunity to find out. It's strictly speculation on your part right now.

Mr Kormos: Wait a minute. Just like Oliver Stone does, or Leon Uris or James Michener — we only had 15 minutes per caucus with Minister Leach. I was just starting to warm up and I thought we were making some fine progress with the questions. There was one question which he couldn't hear, so that one had to be repeated. You know what's remarkable? I'm told that some lawyers give advice to their clients as a tactic in the witness box that if you want some time to think of the answer to a question, say you didn't hear it or ask for clarification. Have you heard of lawyers doing that for witnesses, Chair? I don't know whether you've heard of it.

The Chair: No.

Mr Kormos: I'm told good lawyers do that with their clients.

The Chair: Do you want to tell us your source, Mr Kormos?

Mr Kormos: One question he couldn't hear; another question he wanted clarification; a third question received an answer totally isolated from what the question was. We only had 15 minutes. You know what has to happen. We've got to draw some —

The Chair: Mr Kormos, we've got the Hansard. We're dealing with the first amended motion right now. Don't

you think you'd like to be a little bit more focused on that motion?

Mr Kormos: I'm focused, Chair. I'm as focused as anybody could ever be.

The Chair: Because we not only have to deal with that amendment, we have another amendment. We also have report instructions. We also have to deal with the motions. If you want to be focusing on the motion, that might be helpful.

Mr Kormos: Let's not waste time, Chair. Let me get back to what I was doing. We didn't get an answer to the question, "Did you ask anybody for advice?" I think that's intriguing. I was speculating, I don't think unreasonably: Why wouldn't he have asked Jim Wilson, the Minister of Health? They're in cabinet together every Wednesday morning; maybe that's the only time. They've got cabinet committee meetings and stuff like that they do together, and I was just wondering if it went like this: "Hey, Jim, what do you think?" and if Jim said, "Leach, are you nuts?"

The Chair: I think, Mr Kormos, you can make a reasonable inference in terms of why he should have done something, but why do you want to make it into sort of a monologue in terms of what their conversation was? Do you think that's really helpful?

Mr Kormos: I'm just trying to make it a little more real-life so you can get the feel for it.

The Chair: I think this is as real-life as it is. This is as real-life as you can get.

Mr Kormos: Are you kidding? This is silly. This is irrelevant. You've got one member of the Tory caucus who would have made a great Stalinist because that member — I don't want to name her, but she wants to keep rewriting history. If the facts don't suit her, she'll simply state them in a way that they do. If certain points don't —

Mrs Marland: On a point of order, Mr Chair: That is a blatant example of imputing motives and I take very strong exception to, of all people in this House, Mr Kormos trying to explain what I do and how I do my work, thank you very much.

The Chair: Mr Kormos has not identified the member, but the type of language that you're using here, "Stalinist" —

Mr Kormos: No, I said she wasn't.

The Chair: She wasn't.

Mr Kormos: No.

The Chair: I don't think you should use that type of language, Mr Kormos. I just want to focus on the amendment.

Mrs Marland: Is there another female member on the committee this afternoon?

Mr Kormos: I'm blind to gender, Mrs Marland.

Mrs Marland: Right. I'm sure you are.

Mr Kormos: I wouldn't have considered — and I'm not identifying the member, but I'm just saying that the member wants to rewrite history, wants to isolate facts and ignore others, wants to refer to only portions of the commissioner's report.

I think it's important that the report make reference to this correction. I think it's important that the committee understand that Judge Evans rarely would proactively

address comments that are made at a committee hearing, as he did in his letter of July 17. It seems that Mr Evans — and again, impeccable in his style, impeccable in the content, just dead on — didn't appreciate the misstatement of facts, the factual error by Mr Leach when Mr Leach tries to defend his conduct.

If Mr Leach had said, "Look, I knew that it was against the rules, but I'll be damned if I'm going to let my position as a cabinet minister interfere with my ability to represent my constituents," I tell you, I'd be 100% behind him. That's the kind of chutzpah that I like and that I'll back up any day of the week.

If Mr Leach had said, "No, to hell with the Premier and these stupid rules" — no, I've done it again, haven't I? But I'm just trying to put this — I mean, if he had said that, I'd have been 100% behind him. I would have said, "I admire the minister's commitment to his constituents and the fact that this is almost an act of civil disobedience, and I'll link arms with him any day of the week."

Interjection.

Mr Kormos: Well, I will, when it comes to that.

But rather, he danced. He did the jig. He was sidestepping. He was waltzing and he was polkaing, and he was just dancing all over, again trying to be everything but a person who would accept responsibility for his conduct.

I think this committee has to address the fact that the commissioner has clarified what he meant when he recommended no penalty be imposed. I think with respect to what will be debated in short order as the second amendment, once the Premier — the Premier's got to come clean. He was relying upon the commissioner's comment about the recommendation for no penalty as a rationalization, as the excuse for his inaction with respect to the matter.

As I said last week, if a beautiful political scenario — and again, if the brain trust considered this and it was rejected, I commend them. I commend you. But if the scenario had been one wherein Leach said, "I was wrong. I breached the standards. I violated the law. I hope that no harm was done" — and again, if the government had let us call the head of the hospital restructuring committee, we could have determined that, and I suspect the evidence would have been to that effect — "and I have therefore submitted my resignation as a minister, knowing that the buck stops here," that's the proper thing to do. Reference has been made to any number of precedents wherein that has happened.

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Then the Premier could have said: "Mr Leach has tendered his resignation, but Mr Leach is such a valuable part of my team, I value his advice so much and his conduct in cabinet has been such that I wouldn't dare lose his expertise and his input. Therefore, I'm telling you I refuse to accept his resignation and I will accept the responsibility." The buck stops there then. But we didn't see —

The Chair: Mr Kormos, I'm going to deal with each amendment one at a time. We're going to vote on it and then we'll move to the next amendment, just to help you focus on the first amendment.

Mr Kormos: Okay. Let's get back to the first amendment, then.

If that had been the scenario, Mr Leach would have fulfilled all of his obligations. Unfortunately, it wasn't until Mr Silipo was talking to him in the committee for that shortest period of time — Chair, please don't talk about this as having been an opportunity to get the facts. Are you kidding?

The Chair: Mr Silipo and the subcommittee all were together with respect to the procedure and there was all-party agreement on how they wanted to proceed.

Mr Kormos: The government would only let the committee have two days. One of the caucus members — I won't name her — talked earlier today about: "Oh, we've only got two days to do this. That's all the time that's been allotted to us." Are you kidding? The government didn't want any days to do it. The government dragged its heels. The government tried to stonewall on the issue of a hearing. Then it played silly bugger with the witnesses to be available to the committee.

The Chair: Mr Kormos, do you have to use that type of language?

Mr Kormos: That's not bad language.

The Chair: It's certainly not parliamentary.

Mr Kormos: Okay, played silly whatever about the witnesses. Look what it did: No Jim Wilson, no Judge Evans, no head of the restructuring committee, who is the recipient of the letter from Mr Leach. Facts? They didn't want the facts to be brought forward.

Charlie Harnick, the Attorney General — first of all, I told you, I've got a little bit of a hard time hearing him talk about integrity. I do. You don't know him the way I do. So I've got some problems with that. But he knows nothing about the scenario. He knows absolutely nothing about —

The Chair: Mr Kormos, you've identified the member. You're sort of impugning his integrity.

Mr Kormos: Who?

The Chair: Obviously the Attorney General.

Mr Kormos: I've directly attacked him.

The Chair: Do you think you could withdraw that?

Mr Kormos: On other occasions I've directly attacked him. You know some of the things I've called him in the House. I'm not going to do it now.

The Chair: You don't need to do that now.

Mr Kormos: I'm not going to call him what I've called him in the House, and once outside in a scrum in an effort to try to entice litigation from him, knowing that he wouldn't be able to prove his case.

But we haven't had the facts. This committee process has really been quite silly. The committee process has been one where the government has used its majority on the committee. Again, I understand the wherefore and the why and the how and how that develops and where it comes from. I suspect it's Mr Clement — is it Mr Clement? Yes, okay. It's Mr Clement who meets with somebody from the House leader's office. The staff people are here and they report back. Everybody gets together and they assess at the end of the day: "How did we do today?" It's no secret. "How did we do today? Did we take any shots? Did we earn any points? Were we able to put out that fire?" That's how these things work. They're pretty phoney at the end of the day. It's all about optics. It's all about getting rid of this with the least amount of damage possible. That's what's sad.

I can't speak for the Liberals and I wouldn't purport to. You don't know how tempting it was to have joined them. I can't speak for Mr Silipo, but I suspect he might share that. To have to come back here today, a whole week later, for me, coming up the QEW this morning in traffic jams, I was late and the whole nine yards. It was a little tempting, but we stayed, because rather than doing drama, we wanted to have a crack at hearing some answers to some questions.

There were precious few answers. Answers that could have been obtained weren't made available because of the government's refusal to permit certain witnesses to be called. It was the government that insisted that this last for only two days. They know why they did that. They did it because the less exposure there is, the less damage can be wrought. This isn't appropriate, but I suspect that Mr Leach is being set up for a fall in any event, that he may find himself cut loose or transferred to another ministry. But the Premier's been very good, very cautious and very skilful at not having fired anybody from cabinet. Nobody's been fired from cabinet. I'm sorry: one in the miniest of shuffles, but it was before any scandal erupted. There were no allegations of misconduct etc. It was just a bit of quiet little surgery where the cyst was removed or at least drained, and there was no fanfare.

The government's going to get its way with the motions. I'm anxious to hear where Mr Clement stands on especially this amendment. The next amendment, which I'm not speaking to now, I could live without if worst came to worst.

The Chair: Are you speaking about number 1 or 2?

Mr Kormos: I'm not going to speak to amendment number 2, because that's not on the floor now, but I could live with that being defeated by the government.

But if this amendment number 1 isn't included — and I can understand the government's reason not to want to include it. They've got a whole lot at stake; they've got the game plan they set out, that, "After all, the commissioner said he didn't have to resign," which the commissioner never said, but they wanted to say that. They've got a whole lot at stake. They knew it. I don't understand. I can't for the life of me imagine why some of the smarter people on that government caucus — maybe they resisted; I understand that too. Maybe they said: "No, don't try that. Don't pull that one off. It won't work. It's transparent." I suspect maybe they did. I suspect they said, "Don't play that game," but then somebody said: "No, that's the game plan we started with. We've got to stick to it." I really don't understand that.

Some day 10 years from now, when he's the Premier and I'm semi-retired down in small-town Ontario doing a little bit of legal work here and there, I might have a beer with him — I don't want to identify him — and get the straight goods. But he knows I know, and that's the neat thing about this. I know exactly what I'm talking about on this one. I'm dead on, because I've been in the government caucus. I didn't find it any more attractive when I was in government than I do in opposition, and my colleague will probably attest to that. I didn't. I found it sordid. I found that it eroded not the cash register honesty of anybody, okay, not the dollar-and-cent honesty, but it begins to erode the intellectual integrity of people. It really does.

The bank can foreclose, and your car, your house and your cottage can be gone tomorrow, like that. It's happened to many people. You can lose all that stuff, but your integrity you can only give away. Nobody can seize it. It was like what old Santiago said. Remember what he said? "A man can be destroyed but never defeated." He said that as he was towing that corpse of a marlin back to Havana. "A man can be destroyed but never defeated." That's what's wrong with these types of games and these types of processes, because defeat you only do yourself. That's what he was saying. Defeat is surrender, and only you can do that. Nobody else can defeat you. Defeat is something that comes within you; somebody can destroy you. But what this process does is, people defeat themselves. They do undergo defeat, because they allow their integrity to be undermined, to be eroded. They're left here, some of the more clever ones and, quite frankly, honest ones, otherwise good people, shaking their heads, saying: "What the hell did I do today? It was a messy business I got myself in."

This has been a sad committee process. I've been in a lot of them — other than some of the real oldtimers, just about as many as anybody. This got off on a sad sort of footing and is going to wrap up on it. It'll be interesting to see how the government members respond to this amendment. I'm not challenging them. It'll be one chance for them to lay waste some of the comments I just made. I'd be pleased to have some of those comments wasted. That's all I'm going to say about this.

1450

Mr Clement: Just a couple of brief points about the amendment: I'm glad Mr Silipo took to heart my suggestion from last week, which was that if we had any issues we wished to have clarified, there is a way to do that and that is simply to ask the commissioner. We, as members of the Legislature, have an untrammelled right to have correspondence with the commissioner and to seek clarification on his views as to how he purports to enforce the Members' Integrity Act and what his interpretation of that act is.

There are whole books published every year — the annual report of the Integrity Commissioner — which are filled with scenarios that are presented to the Integrity Commissioner by members on whether something is inside or outside or on side or offside, and the Integrity Commissioner propounds his views. The fact that Mr Silipo wrote to the Integrity Commissioner between last week and this week was perfectly within his right to do and I'm sure some would see that as absolutely commendable. I don't have any objection to that.

There is a division, however, between any additional commentary by the Integrity Commissioner and what the purpose of this committee is. We are bound, whether the members opposite like it or not, by the order of the House, which said we are to consider the report, not extra opinions by the Integrity Commissioner, however valid those opinions are. I happen to agree with the Integrity Commissioner. I agree that it is not the Integrity Commissioner's place within the legal boundaries of the Members' Integrity Act to dictate who is inside or outside Mike Harris's cabinet. I agree with the Integrity Commissioner on that, but that is completely irrelevant to what

was asked of the Integrity Commissioner and the answer he replied with in the report, and we are here to consider the report. I find both amendments actually to be outside the purview of what this committee was asked to do on behalf of the Legislature and what we're compelled to report back.

As for the Premier of Ontario and his position on Mr Leach's position and how it is affected by the Integrity Commissioner's report, I think this requires, after Mr Kormos's remarks, further clarification. I was compelled to go back to the Hansard of the Legislative Assembly because Mr Kormos made a big point about how the Premier in fact was relying on the conclusion of the Integrity Commissioner that no sanction be required in this case to keep Minister Leach in the cabinet.

Upon a commonsensical reading of the Premiers's remarks on June 25, that is not the case. I think the Premier was quite clear and I'd like to quote very briefly from Hansard, page 11091, from June 25, 1997, where in response to the leader of the official opposition, Mr Harris says:

"What the Integrity Commissioner said, for the record, since you didn't want to put this part of his report in the record, was that the 'action was an error in judgement.' He said it was 'based on his limited experience in government.' He said it was 'made in good faith in the mistaken belief he was entitled to do so.' He said, 'I recommend that no penalty be imposed.'"

Mr Harris goes on to say: "Quite contrary to what the member is alleging, I am satisfied with the report of the commissioner. In fact I go further, to seek further clarification to see what implications this may have in other areas."

That is in fact what the Premier said. He did not say, "Because no penalty was recommended, I am keeping him in my cabinet." He referred to the conclusion that there was an error in judgement, to the conclusion that it was based on limited experience. In fact, as the Attorney General said today, we all have limited experience with the application of convention in the Members' Integrity Act, because this is the first time in the history of this kind of legislation that the Integrity Commissioner has applied parliamentary convention rules rather than legal rules, but that's over and above what the Premier said. He also said, as the commissioner said, the error was "made in good faith in the mistaken belief he was entitled to do so."

I would conclude then that there is a whole web of reasons that not only did the Premier accept the Integrity Commissioner's report, but made his conclusion that it was appropriate Mr Leach continue to be a minister of the crown, which is the Premier's perfect right to do. But I did want to correct the record. There seemed to be a conclusion made by Mr Kormos that there was a direct and single correlation between the conclusion of the Integrity Commissioner that no penalty be imposed and the current status of the minister. It is clear from Mr Harris's statements in the House that I have read from Hansard that there is more to it than that and that he relies on the totality of the commissioner's report and all the commissioner's findings to make that conclusion.

The only final point I would make, which the opposition has seen fit not to respond to from my remarks last week, is a close reading of the commissioner's conclusions with the Members' Integrity Act itself. The Members' Integrity Act is quite clear that there is a range of options available to the commissioner upon the finding there has been a violation of the act. The commissioner may decide that no penalty be imposed, or he may decide the member be reprimanded, or he may decide the member be suspended, or he may decide the member's seat be declared vacant.

Let's just take the first two, no penalty versus reprimand. He could have reprimanded the minister; he chose not to do so. I find that highly significant. We are speculating a little bit today that perhaps one of the reasons was that this was the first time he applied convention to a case, but certainly from the words of the Integrity Commissioner himself about how this was made in good faith, how it was an honest mistake — I'm paraphrasing here — and how it was based on limited knowledge, therefore he concluded that no penalty be imposed.

He could have reprimanded the minister. Maybe that would have created another political dynamic the Premier would have had to respond to. But the fact of the matter is that the commissioner made a series of conclusions about the context and the circumstances in which the error was made: good faith, error in judgement, based on limited experience with these sorts of things.

All that context is very important and goes to the reason why, in my view, the commissioner decided no penalty be imposed rather than — in this case probably a reprimand was the other logical alternative, and as we've seen, as Mrs Marland and others have put on the record, there have been occasions when the commissioner has reprimanded. The member for Etobicoke West — well known to us all — was reprimanded in his day, and as I recall at the time, duly made an apology and said it would never happen again and it has never happened again in his particular case, of the infraction that occurred in that case. So there have been cases I can recall where a reprimand was in order and was duly accepted by the offending member.

In this case, no reprimand was suggested by the commissioner and all that goes into the political context in which we find ourselves, and I think it's a better explanation than the one offered by Mr Kormos.

In conclusion, I am quite happy with the motion I have presented. I do not seek to amend it in any way. I want it to be focused on what this committee is empowered to do, which is to comment on the report itself, which this motion does, and I would encourage members to adopt the main motion without amendment.

1500

Mr Silipo: I guess we can take from Mr Clement's motion that the government members' marching orders are pretty clear, and that's fine, but let's also be clear about what they're based on because they're not based on just staying within the report, with all due respect, Mr Clement. They're not based upon simply this question of what the commissioner found and what his penalty was, which was to not reprimand Mr Leach, because as I think

Mrs Marland pointed out earlier, under the legislation, once the commissioner has found the error was committed in good faith, he can't impose a penalty, he can't impose a reprimand.

That isn't the issue, nor am I suggesting — I want to be really clear about this — through either of the two amendments I've put that the minister should resign or should be fired. I have taken that position in the House. I still believe that's the appropriate thing for this minister to do. I talked about that last week. But let's also be really clear. Neither of my amendments talks about that. If you want to vote against them, fine, vote against them, but don't vote against them on the rationale that I'm asking for a higher test or that I'm asking for somebody's resignation, because in these motions I am not.

What I am saying in these motions is that in addition to our responsibility to report back to the commissioner, and we would be reporting back to him by saying we adopt and accept his report — I have no problems with that and no problems with your motion as far as that is concerned — the main reason I've put these two amendments is to deal with the essential issue and the essential approach that both the minister, up until he appeared here last week, and the Premier to my knowledge still today, have taken, which is to hide behind the commissioner's report and pretend that the commissioner's report dealt with all the issues surrounding the conduct of this minister around this issue; you know as well as I do that is not the case.

The Premier in a series of answers to a series of questions I put to him in the House continued to take the position back on June 25 that he was accepting the report of the commissioner and therefore didn't have to do anything else. You know better than that. You know that doesn't deal with the matter. That's why this additional clarification of what the commissioner said and didn't say, or more correctly what the commissioner's powers and responsibilities are and what they are not, is really crucial if you want to do any sense of justice to this issue, because the Premier was wrong when he said in the House he was accepting the advice of the Honourable Justice Gregory T. Evans, "who suggested to me what was the right thing to do, and I am doing that."

Well, I'm sorry. The minister himself, the person who has been the centre of all this attention, himself last week acknowledged that the issue of cabinet membership is outside of the commissioner's findings. You now have unequivocally from the commissioner his own words that say that.

You can ignore that. You can pretend that doesn't exist. You can continue to just spin the line you have been spinning on this, but the truth is out. It's out because that's just the way it is. It's out because you can't prevent it from getting out there. Sure, you can continue to spin the line that somehow this is extra-opinion, but it's not extra-opinion when it deals essentially with what are the powers of the commissioner who is charged with the responsibility not only of the finding of whether someone has breached the act, but second, of what penalty to impose if he finds a breach.

You cannot hide behind a penalty that wasn't imposed as a justification for not imposing it when the person

charged with the responsibility for imposing it does not have that responsibility and that right in the law. That's what this amendment says. You know that just as clearly as I do, that that's what this amendment says. It says, "Let's put all the information back in front of the Legislative Assembly to which we are charged with the responsibility of reporting," and, "Let's on down the line in the second amendment say to the Premier and the minister: 'We want to be clear that we understand that the question of what happens to you and what you do, Minister Leach, or what you do, Premier Harris, with respect to how you judge the conduct — not how the commissioner judges the conduct but how you judge the conduct — of Minister Leach, is really up to you to determine. It's up to the minister himself and, second, it's up to the Premier.'" That's all these two amendments are saying. We can fight another day about whether the minister should resign or not, but that's not in either of these amendments.

Please, if you want to vote against them, vote against them for whatever reasons you can dream up but not because of that, because that isn't in here and it's purposely not in here because I want to push this issue to see how much of a smokescreen this whole thing is or how much it really is about being straightforward with ourselves and with our colleagues in the Parliament regardless of parties. That's why I chose to stay rather than take the route that the Liberal caucus members took, which was to walk out of the meeting last week. It's because I see my role in opposition as holding you guys accountable, but doing it in a way that, when situations warrant, is tough but also reasoned. In this case I think that's what's called for. What's called for is some decency on all sides and some decency that says, "This is the realm of the findings."

Yes, we didn't have these findings from the commissioner by having him present, but that was because you excluded him. You can't now turn around and say, "We excluded the commissioner from being here, therefore the information he sent us is irrelevant." I'm sorry. You can make that argument. I don't think it washes out there. I don't think the people following this or listening to this or watching this or hearing the reporting from this are going to buy that argument.

Maybe your spin line is sort of the next best thing that you've got to a simple admission, which could have happened back on June 25, by the minister that he screwed up and was prepared to take responsibility for that. I suspect he might have been willing to do that, but it was clear again, my interpretation, only my interpretation, from what he said to us last week that, if anything, the Premier intervened and said, "Sorry, Al, you're not going to resign. I don't want a resignation," because then the Premier would have been faced with two other ministers, and what was he going to do with them?

But I want to tell you, regardless of partisanship on stuff like this, what we do need, if we really have any seriousness about tackling at all the cynicism that's out there from the public towards all politicians, is when things like this happen for people to have the decency, the guts and the courage to own up to them, because then I think the public, and quite frankly all of us in opposi-

tion, would be a lot more understanding than when there is the stonewalling, when there is this pretence that nothing wrong has happened.

I've said before and I will say again, I'm even prepared and very open to the idea of looking at what changes need to be made to the rules, because I think there needs to be more leeway given to ministers to be able to represent their constituents on issues like this. I have no qualms about approaching that, but that's not what we're discussing here today. What we're discussing here today is not just so much the conduct of Al Leach as it related to this issue and the previous incidents when he has been found to be in trouble, but what this has turned into, as I see it, is more the approach that the government, starting with the Premier, has taken to stonewall any acceptance of responsibility for a screwup that one minister has made. I think that's actually a far worse mistake than the original wrong that Mr Leach committed.

I think when the Premier tries to hide behind the commissioner's report and then when there are marching orders given to the government members to say, "Ignore any evidence to the contrary, ignore any reporting back that says what the lay of the land is," as in this case with this very simple amendment that says what the law is according to the man who is charged with interpreting that law, I don't have any other way but to conclude from your refusal to adopt this that you're just continuing that kind of stonewalling that clearly the Premier has set you up to do. While a part of me understands the role you're playing as members of the government caucus, the parliamentarian in me abhors what you're doing, because you're being put in a position where you're trying to perpetuate something that's fundamentally wrong.

1510

As I say, that something is no longer Al Leach's breach. We're way past that. But it is instead the continued pretence that nothing wrong has happened here and that all you have to do is hide behind the commissioner's report, ignore any facts that are outside that, in your view — that you can put outside that — because otherwise you'd have to admit that what the Premier has said is wrong. My God, how can you do that? But that's what's at issue here. We'll see. Obviously, if Mr Clement's position persists, this amendment and the next amendment will get turned down. That's fine. We'll put together our dissenting opinion, we'll get it in front of the Legislature.

The issue's not going to go away and it doesn't matter, really, at this point what's in the report or what isn't in the report, because what's more important is what people understand out there. What I think people have understood through this whole process, and again why I chose to stay here rather than run away, is that once again you have a government that tries to shape the truth the way it suits them, ignores the facts because the facts get in the way of the truth. I'm sorry; I think people out there are more intelligent than you give them credit for. People won't forget.

The Chair: At this time, we can vote on the amendment to the motion.

Mr Kormos: Recorded vote, please.

Ayes

Kormos, Silipo.

Nays

Baird, Jim Brown, Clement, Fox.

The Chair: The amendment is lost.

On the next amendment, moved by Mr Silipo, any discussion?

Mr Kormos: Mr Chair, I should indicate, and perhaps Mr Silipo will as well, that the comments I made are applicable to this amendment, although I was speaking of course only to the first amendment, as they were to the amendment that the Tories just defeated.

The Chair: A recorded vote?

Mr Silipo: Please.

Ayes

Kormos, Silipo.

Nays

Baird, Jim Brown, Clement, Fox.

The Chair: The amendment is lost.

With respect to the main motion —

Mr Kormos: Chair, please, just the briefest of comments. I am not surprised but extremely disappointed that bright, capable members of the Tory caucus would let themselves be whipped in this manner. I have to concede that I have at times held them in regard. I'm well aware of the qualities that some of these people opposite us have, some of their skills, some of their background.

As I say, I was tempted, because in essence I very much agree with the Liberal analysis of this back last week, to join them, but I was also curious and interested enough to want to be a part of the debate to see whether we could make any headway. When we got this motion presented last week, the writing was on the wall. That was it. Those were the marching orders. That was going to be the framework and nobody dared venture beyond that.

My — not my worst fears, because thank goodness this nightmare will be over in a year or a year and a half, but as it is for the moment, this committee has just been, as I say, silly. It wasn't designed to achieve anything. It was designed to conduct an inquiry — not an inquiry but a consideration — report back, and, as I said last week, in the most Canadian of ways, with a stonewalling and a whitewash.

Here we go again. Let's do her. Let her go. Let's get it done and over with. But it's not going to go away. Watch.

The Chair: A recorded vote on the motion moved by Mr Clement.

Ayes

Baird, Jim Brown, Clement, Fox.

Nays

Kormos, Silipo.

The Chair: I declare the motion passed. At this time we have an opportunity for further discussion or we can get into report-writing instructions.

Mr Silipo: Let's not belabour the point. I think you've got a motion, unless Mr Clement or any other government members have any additional motions. We don't have any more. You've got your instructions. Let's get the report written and be done with it.

Mr Clement: Just to follow on Mr Silipo's remarks, I think we certainly have a pretty good sense of the submissions by Minister Leach and Attorney General Harnick. We had the discussion on both days and a culmination in a motion that accepted the report of the Integrity Commissioner. I think you've got the makings there of a report to the Legislature.

To be helpful, I am prepared to move a procedural motion which would direct the subcommittee to report the contents of the motion which you just passed, namely, that we accept the report of the Integrity Commissioner, and would in some brief way encapsulate the submissions of Minister Leach and Attorney General Harnick and the debate that occurred in this committee over the past two days.

The Chair: Paragraph 8 of the subcommittee report indicates that the subcommittee is authorized to work with the Chair to finalize the report based on motions adopted by the committee, including making decisions regarding its adoption, translation and form of presentation, and authorized to report to the House, to paraphrase.

I don't know whether there is anything else that you want to add to that. It seems to be there. If there's nothing else to add —

Mr Clement: I've nothing to add.

The Chair: If there is nothing else to discuss on the matter, I declare that the hearings are complete and subject to the report of the subcommittee.

Mr Silipo: I guess we'll deal through the subcommittee with the time lines by which you want our dissenting opinion.

The Chair: Yes, I understand that you are going to put in a dissenting opinion. I would think we'll have a subcommittee meeting. The Liberal caucus representatives are not here, so we wouldn't be scheduling one today. But I think we should try to schedule a meeting in due course. Is that all right, Mr Silipo?

Mr Silipo: Sure. I don't know that the report needs to be much longer than in effect the motion that's in front of us, but if you want a more narrative explanation of the process, that's fine. I don't have any problems with that.

The Chair: Okay, I understand. Mr Clement?

Mr Clement: If Mr Silipo is saying that the motion is the report, that's one option available to you.

The Chair: We're not having a subcommittee meeting right now. We're essentially finalizing the hearing process and if there are no further motions, no further discussions, then the hearings are complete. I thank everyone for participating and I'll be in touch with the subcommittee representatives to deal with the report.

The committee adjourned at 1520.

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Official Report of Debates (Hansard)

Wednesday 20 August 1997

Journal des débats (Hansard)

Mercredi 20 août 1997

Standing committee on the Legislative Assembly

Tartan Act, 1997

Comité permanent de l'Assemblée législative

Loi de 1997 sur le tartan



Chair: Joseph N. Tascona
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 20 August 1997

Mercredi 20 août 1997

The committee met at 1555 in room 228.

TARTAN ACT, 1997

LOI DE 1997 SUR LE TARTAN

Consideration of Bill 132, An Act to adopt an official tartan for Ontario / Projet de loi 132, Loi visant à adopter un tartan officiel pour l'Ontario.

The Chair (Mr Joseph N. Tascona): I'll bring the committee to order. We're here today to deal with Bill 132, which is a private member's bill of Mrs Ross. The proceedings today will commence with a statement by Lillian Ross, the MPP. The one person who was going to make a submission has cancelled, so we will then move to discussion and clause-by-clause consideration of the bill. Sorry, I stand corrected. We have one submission by Mr Jim MacNeil. There was one other presenter.

At this point in time, I'll ask Ms Ross if she wishes to make her statement.

Mrs Lillian Ross (Hamilton West): Thank you, Mr Chair and committee members. I appreciate the opportunity to discuss Bill 132, An Act to adopt an official tartan for Ontario. This bill, if passed, will establish an official tartan for the province and will bring forward another symbol to the people of Ontario, similar to the amethyst and the trillium that we adopted many years ago.

The Tartan Act recognizes Scottish heritage in this province, leaders who brought significant contributions in history, culture, law and government. As a matter of fact, many communities in Ontario have been named after Scottish leaders, communities such as Fergus, Wallaceburg, Glengarry county and Cambridge, to name just a few.

We have many leaders in education: The U of T, formerly King's College, was established by a Scot as was the Agricultural College of Ontario in Guelph, by Sir Fergus. Queen's University, founded in 1841, was established by a Scot. Many other leaders — Alexander Graham Bell, the inventor of the telephone, which I'm sure we're all familiar with, was a Scot. Colonel John McCrae, the author of *In Flanders Fields*, was a Scot. Many of our political leaders, the first Premier of the province, Sir John Sandfield Macdonald, was a Scot, and I'm told that the first five Premiers of the province were

all Scots. So there's a tremendous history of the contribution that Scots have made to this province.

The member for Grey-Owen Sound, Bill Murdoch, brought forward a private member's bill that recognized April 6 as Tartan Day, so it only seems commonsensical that we should bring forward a tartan to go along with the Tartan Day of April 6.

Ontario is one of only three provinces that does not currently have a tartan, the other two being Newfoundland and Quebec.

Personally, for me in Hamilton, we have many Scottish connections. Sir Allan MacNab had a home which we call Dundurn Castle, which is a landmark in Hamilton. Whitehern castle and many of our streets — Aberdeen, Dundurn — are all named for Scots. I happen to be married to a Scot, so I have some history.

Mrs Margaret Marland (Mississauga South): There's a conflict there.

Mrs Ross: Yes. I have some relationship that way as well.

Just to give you a little bit of the history of the tartans, they are an ancient form of dress used by the Scottish Highlanders. There are many different forms of tartans: There's a mourning tartan, a hunting tartan, a clan tartan and a district tartan.

This tartan that we hope to adopt for the province is in fact a district tartan. A district tartan is one that identifies a person's residence in a certain district, whether that person is a member of the dominant clan or not. So anyone can adopt a district tartan. That is what this tartan is; it's a district tartan.

The reason I brought it forward was because many people in my community are of Scottish heritage and thought it strange that we didn't have a tartan when the other provinces did. I investigated it further and found that in fact they were correct. There are, however, eight tartans in the province and many people think there is an official tartan, but there really is not. This tartan is based on the first Premier of Ontario, Sir John Sandfield Macdonald, his Macdonald of Clanranald tartan. I think that it's a tartan that we can all adopt and say that it is part of our heritage and part of our culture.

There's a gentleman making a presentation after me, Mr MacNeil, and he's going to bring forward some points that I probably would, but I'll leave them up to him.

One thing I wanted to say was that if you read the articles that I passed out, there's one from the *Ottawa Citizen*,

and I think it states very clearly how a symbol such as a tartan can bring all of us together in this province. He very clearly stated in his article how when the second reading in the House took place, the chamber changed because it brought forward a community of interest that we all share as Ontarians. I'd just like to read you a couple of quotes from that article. It says:

"What was notable when second reading debate occurred was the tone of this normally testy place. Stories got personal. Members tried to explain something of themselves and their part of the province to colleagues from elsewhere. The search for what they had in common replaced the focus on what divides."

I think that is exactly what will happen if this proposal is adopted for the people of the province of Ontario. The debate for second reading brought forward, as the article states, many personal histories and it was quite interesting to find out in fact how many people had an attachment to some Scottish heritage and culture in their own families.

I would like to recommend to the committee that we adopt the tartan. I won't tell you what the colours and everything are because Mr MacNeil's going to do that and I don't want to repeat what he's going to say. However, in the Legislature the second reading received unanimous support. All members of the Legislature were in agreement with adopting this tartan, so I sincerely hope that the committee agrees with that support.

I just want to reiterate that this symbol is another symbol that we all have in common in this province and I think it can do nothing but unite us even more than it does now.

Mr Allan K. McLean (Simcoe East): I have a letter here from a lady, Brenda Taylor, who had indicated in her letter to the clerk that, "We have a lovely Canadian tartan and I very rarely see it worn outside of government buildings." So we do have a Canadian tartan. Is it an official tartan?

Mrs Ross: No, Mr McLean, it is not. Unfortunately, it has never been registered, so it is not official.

Mr McLean: So it's only the provinces that have official tartans?

Mrs Ross: That's correct.

Mr McLean: We're one of three that do not have an official tartan?

Mrs Ross: That's right. Simply the passing of this bill does not make it official. It officially becomes a tartan when it's registered with the Lord Lyon King of Arms in Scotland. It has to be registered first before it can become an official tartan.

Mr McLean: There are some people who have said to me that they thought the Maple Leaf was our official tartan.

Mrs Ross: It's quite interesting, when this bill came out, how many people out there actually believe they have the official tartan. There are, as I stated earlier, eight tartans out there and many people believe that they have the official one, but there is no official tartan.

When Annamarie Castrilli commented in the House on that, she even mentioned that back in 1988 the Liberal government brought forward a tartan, but in fact they did

not do anything further with it, so it never went to become official. It never was registered.

Mr McLean: Thank you. I just wanted the clarification.

Mrs Marland: Mrs Ross, when this was in private members' business, I was unable to be in the House so I'm sure you've already addressed the question, but I would like to know how you came to select this particular tartan to become our official tartan.

Mrs Ross: As I stated, there are many people out there who think they have a tartan that is official. Research was conducted by the chair of Scottish studies at the University of Guelph who did all the research for this tartan, and it was designed in fact by Mr Jim MacNeil, who'll be making a presentation in conjunction with the chair of Scottish studies. That is how the tartan was designed. It is, as I said, based loosely on the tartan of Sir John Sandfield Macdonald, the first Premier of the province and has the colours of green, blue, white and red in it to signify much of our heritage and culture in this province.

Mr McLean: What do they signify?

Mrs Ross: I'm stealing his thunder, but the green represents the forests and fields in the province; the blue is the sky above us; the red acknowledges the aboriginal communities, native Indians; and the white — my mind's gone blank.

Interjection.

Mrs Ross: No, it's not. I'm sorry. My mind's gone completely blank here.

Mr David Tilson (Dufferin-Peel): What is the sky?

Mrs Ross: The sky above us, yes, I'm sorry. The blue was the waters. Did I say the sky for the blue? That's where I got mixed up. Sorry. The blue was for the waters and the white was for the sky. I do have a small patch of it. I'm sorry I didn't bring my sash with me today, but I do have a small patch here that I can pass around. Oh, we have a big patch, which I'll pass around to you so you can see the actual colours of the tartan. As you see, it's predominantly blue and green to represent the forests and fields and the waters of the province, and the white line represents the sky whereas the red represents the aboriginal, native community.

The Chair: Is that going to be an exhibit?

Interjections.

Mrs Marland: So this tartan then is a brand-new design for the purpose of becoming our official tartan?

Mrs Ross: Absolutely, yes, it is.

Mrs Marland: I just would say in comment that, although you make a heavy emphasis of our historical tie to Scotland, if you think about the other peoples of, for example, just the British Isles, and since I came from a part of the British Isles other than Scotland, there is such a strong tie as to who came from Scotland to Ireland and to Wales in fact where my ancestral roots are or to the rest of England, I think it's most appropriate that a tartan become officially registered on behalf of our province. I find it fascinating because I think everybody is very familiar with the Nova Scotia tartan and most of us can at least begin to

describe it because they've done a very good job of promoting their own tartan as a provincial tartan.

Mrs Ross: Yes, they have.

Mrs Marland: I wasn't aware that other provinces had them, but I can picture the Nova Scotia tartan very well. I would like to congratulate you on your effort to bring in a private member's bill to make such a pleasant event happen in Ontario and to become part of our history and for whoever has designed this. Is Mr MacNeil the person who designed it?

Mrs Ross: Yes, he did.

Mrs Marland: We will be hearing from him so we can congratulate him a little later on in the meeting. Thank you very much.

Mrs Ross: You're welcome.

Mr Tony Clement (Brampton South): Mrs Ross, there must be a big register then, a worldwide register in which you check to see whether a new tartan is in — it's almost like a patent.

Mrs Ross: That's correct.

Mr Clement: I'm trying to think of an analogy — so that there's no confusion as to the origin or meaning of a particular tartan, I suppose. Is that how it works?

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Mrs Ross: As I stated earlier, once the official tartan is recognized, it has to be registered by Lord Lyon King of Arms in Scotland. All tartans are registered there, so in fact there is a list you can check to ensure that the tartan is official and there is no other duplicate.

Mr Clement: Do you have any knowledge as to whether this tartan is unique in terms of its use of colours and design and there's no opportunity for someone to get confused as to whose tartan this is?

Mrs Ross: No. Perhaps Mr MacNeil can get into that. There is a specific way that it's woven that determines what the tartan is. I would prefer that he answer that question, because I'm not knowledgeable enough in that area.

But I can tell you that when Brenda Elliott, the member for Guelph, wore her tartan in — Guelph has a tartan, and Mrs Marland is correct that Nova Scotia has a tartan, but there are many communities across the province that have their own tartans and Guelph is one of them — her tartan is very similar to this tartan. The colours are very much the same, but there are distinct and unique differences in the way it's woven.

Mr Alvin Curling (Scarborough North): Mrs Ross, I too want to congratulate you and commend you for bringing this forward. My party is in strong support of this. Everybody's trying to identify, I notice, with this tartan and the Scottish background, and you know how diverse our party is with different ethnic backgrounds. I being the only black here, you must be wondering what identity I could have.

To begin with, I was very proud to know that they named the Scottish game of curling after me, and the fact is that there are quite a lot of Scots in Jamaica who have migrated here and we can identify with the tartan here now too. I too, as a Jamaican and a Canadian and a Scot,

can identify with the tartan somehow, and I was pleased to see my colleague, my French connection here, was saying to me that there was also black inside the colouring of the tartan, which I was extremely pleased with. Here I am again having much more identification with this than quite a few of my colleagues. It was quite pleasant.

One of the things that really jumped out, as you said, is that Jim Coyle had written about things that can pull us together at times and some of the strangest things, of all things, and here we are identifying here, and here I am identifying with this. It's quite a momentous time, and I want to be on record that, as a Scot, I am proud that we are going to have an official tartan that we can identify with.

Mrs Ross: Thank you very much.

Mr Gilles E. Morin (Carleton East): I want to congratulate you also for bringing forward this bill. I only wish that all bills were as easy to debate and as pleasant also to discuss, one I rejoice in, and I'd like to quote you. "Since the Ontario tartan reflects territorial loyalties, it is as legitimate for an Ontarian of Scottish background to wear the tartan as it would be for an Ontarian of French, Polish, Hungarian or Italian background to wear it as well." Perhaps you will see me some day in a kilt. I want to congratulate you again. I support it 200%.

Mrs Ross: Thank you very much.

Mr Tony Martin (Sault Ste Marie): I think it's a good idea as well to have things that all of us can identify with as symbolizing our heritage, commitments that we make to each other, and the fact that we are a community of people. Sometimes it takes a vehicle such as a flag or a tartan to focus our attention and to do that, so I'm always supportive of efforts to do that. I think they're really, really important.

With that, I wanted to ask you a couple of questions. Somebody had made the comment that we have a national tartan that you very seldom see outside of official functions, and that's unfortunate. If you're going to have a symbol, it's only as effective a symbol as people see it as their own and use it.

I'm wondering if part of the problem sometimes is you get excited about it, you bring it here, we get excited about it, and in our enthusiasm we go ahead and pass it, but we don't do much by way of fertilizing some of the interest in it. In choosing the tartan, one person comes forward and presents a possibility, and I have no quarrel with the rationale. The colours and what they represent certainly are part of our culture and our heritage, our reality today.

It seems to me that it might be even more helpful by way of the ultimate effect and importance of this tartan for somebody, and I don't know who, or some organization to go out and ask people what they think of this and what they would suggest by way of the tartan, the colours. As you know, we had a package that we were given today with a couple of letters from some people who I think supported the idea but have some further ideas about the colours, some of the material that's in it.

It seems to me that you would develop or engender in people a greater sense of ownership of this thing and

probably the possibility that people might in fact wear it and see it as meaning something more readily if they were involved in some way, if their fingerprints were on it, in ultimately choosing whatever we choose as a province as our tartan.

It seems to me once you choose it, once we make the decision here today and we submit to Scotland for recognition by the organization that does that, it's set. That's it; that's our tartan. I think in light of the tremendous importance that this could have for all of us, in light of how helpful it could be, particularly to those of us of Gaelic ancestry, and the hope that it would become a useful symbol down the road and the need to include people, I would just ask you what effort you have made so far to include others in this and whether there is anything we could do to get more people involved, get their fingerprints on it so that at the end of the day they buy into it and they would know about it and on appropriate occasions would wear it, whether it be a kilt or a sash or a hat or some other expression.

Mrs Ross: As I stated earlier, Mr Martin, the tartan was developed with Mr MacNeil and with the chair of Scottish studies. I have spoken in my community with several people involved in Robbie Burns Day and other Scottish events about the tartan and taken it out and shown it to them, and every comment I've received has been very, very positive about it. I believe if you were to ask every Scot in the community, you would have as many different variations of a tartan as you have Scots and I believe that going to the experts is one of the best ways to come up with something that is indeed based on Scottish tradition in this country and in this province.

If you base the tartan on the first Premier of the province, I think that's a legitimate person to base the tartan on. You see, all tartans are based on — usually a family develops the tartan. As a matter of fact, there was someone who was going to make a presentation. The tartan that he wanted to bring forward was based on his grandfather's tartan. I think the chair of Scottish studies is knowledgeable enough in developing and researching it to have come up with this design. I would hate to go back to the drawing board and redevelop another tartan, quite frankly.

Mr Martin: I will certainly at the end of the day support your effort here, but it seems to me we may be missing a wonderful opportunity to bring more people in to this process so the end result would be they feel some ownership and would be more ready to participate in wearing it and truly making it a symbol that has some meaning.

1620

Mrs Ross: As I stated when I tried to describe what the makeup of the tartan was, it's really based on geography. It's not really based on the people, it's based on the geography of the province, so how anybody could object to the greenery and the blue waters, I don't know. But the tartan is based on the geography and not so much the people.

Mr Martin: I'm not so much concerned, to be honest with you, about what it's based on. I think you've presented a very legitimate case for the tartan that you've got

there. It's not the geography that wears it, ultimately, or makes it important or makes it their own; it's the people.

Mrs Ross: But you know what? It's people like you and I who can promote the tartan and can help the people of the province to identify and relate to that tartan. It's the leaders in the community who get people to jump on the bandwagon and take part.

Mr Martin: I understand. I'll end my comments here by saying it seems to me it makes more sense to have people involved before than to try to get them involved after you've made the major decisions about why and how and what. Anyway, that's all.

Mr McLean: On a point of privilege, Mr Chairman: I see Wildman is speaking in the House and I think we have probably about 10 or 15 minutes left before we have another vote. I'm just curious how much longer you think we're going to be here.

The Chair: Mr Tilson would like to say something, and then we have Mr MacNeil, who is here to make a presentation.

Mr Tilson: I'll be very brief. I just want to congratulate you on bringing this bill forward. Anything we can do to unify the country or unify the province, I think we all support, although I'm interested of course in your placing the Scottish flavour in it. My ancestors I believe are from Ireland and I'm told that there is Irish tartan as well, although my family never had one. They probably couldn't afford it, I guess, but I don't think we ever had a tartan. My wife, who is of Scottish descent, would never forgive me if I didn't support this bill. She's even out taking bagpipe lessons and I don't know what all.

Aside from what country you tie it to, I think the way you've made your presentation, it's the type of presentation that shows that it tries to describe Ontario and not any one particular country and for that reason it's a unifying factor. I think all members of the committee have spoken in favour of it and I too will lend my support to it.

I have one question which I had asked of you in advance of the committee — it may have been raised in the House, which I wasn't able to be present at — and that is clarifying, for historical purposes, when the tartan first came about and when it is worn today. Are there certain occasions? I know the member for Grey-Owen Sound will tell us to wear it on his particular day, but there may be other days and I'd like to know more about that.

Mrs Ross: The actual word "kilt," which is how you'll see most tartans worn, is a pun or play on the word "Celt." When listening to the member for Downsview when she talked about her Italian heritage, she went back to the days of Julius Caesar, which is when the tartan was first developed and was worn during battle. She claims, and I believe it's true, that the Italians in the mountainous areas used the bagpipes to shepherd their sheep, so there's a lot of relationship of Italians to Scots. The kilt was actually an ancient form of dress and was used in the times of Julius Caesar.

It has been adopted by the Scots, as you know, and currently, today, is worn for any type of ceremonial dress. Robbie Burns Day, as I mentioned. If you've ever at-

tended a Robbie Burns dinner, you'll know that there are many different kilts worn by many different people. It's worn on all ceremonial occasions. However, some Scots wear them for everyday dress, so it can be worn for whatever you wish it to be worn for.

Mr Tilson: Again, I just offer my congratulations to you in bringing the bill forward.

Mrs Ross: Thank you very much.

Mrs Marland: One question I have for you, Mrs Ross, and it may not be one that you can answer today but one that I think we should look into further is the registration. You've mentioned it being registered by an organization in Scotland. Because I had the privilege of designing the coat of arms for the city of Mississauga with one other member of council there, Councillor Frank McKechnie, I learned a lot during a period of two years about the registration and how very important that is. It's not dissimilar from anything that is an official emblem of a city, a town, a village or a province, so when this becomes the official tartan, it also becomes an official emblem of the province.

I certainly found out when we went to register our coat of arms for the city of Mississauga that we did have to register it with the House of Heraldry, I think it was called. Anyway, very quickly through research we can find who that is in London. It may well be that this has to be registered outside of Scotland as well, so I would ask that we follow that up, just to make sure that it is protected.

I must say that it is exciting, the more you think about it. I really enjoyed the member for Scarborough North's comments because I think it's so true about who has ties to all of this wonderful ancestry. In fact we all do; I think that's why we all feel so positive about it. I certainly will look forward to seeing both Mr Curling and M. Morin in their kilts. I went to a public school in England where kilts were our uniform. We look forward to seeing you on Tartan Day in your Ontario tartan kilts.

The Chair: Mrs Ross, I thank you for your statement. We have Mr MacNeil, who is here to make a presentation. I'd like to thank you for coming out today, Mr MacNeil. You have 20 minutes to make your presentation.

Mr Jim MacNeil: Thank you, Mr Chairman, it's a privilege to be with you today. I'm just going to read this, which will give everybody the story of the tartan.

Throughout the world, tartans are worn as a symbol of pride, be it in family or place of origin. Although we in Ontario have a great deal of pride in our province, we do not as yet have an official tartan. For this reason, the province of Ontario tartan has been created.

Based loosely on the Macdonald of Clanranald tartan, the design pays homage to Sir John S. Macdonald, Ontario's first Premier, while at the same time it reflects the diversity of our province. In the tartan, the shades of green represent the forests and agriculture of Ontario, the red represents the first nations of Ontario, the shades of blue represent the waters of Ontario and the white represents the sky over Ontario.

Ontarians may now proudly wear a tartan wherein all colours and stripes combine to create an atmosphere of

harmony and prosperity, a tartan designed with a phrase in mind well known to Ontarians, "Keep it beautiful."

You've all seen the tartan and I know that everywhere it's been shown, everyone who has seen it has had very good comments on it. After the second reading, all the people who were around there wanted to place orders right away and I said, "No, not yet." But it was very well received by everyone I have spoken to about it.

1630

The Chair: Thank you, Mr MacNeil. Are there any questions for Mr MacNeil?

Mr McLean: How soon will we be able to get a jacket made?

Mr MacNeil: As soon as I can register it in Ottawa.

Mrs Marland: Mr McLean is asking that question because he has got one he's been trying to replace for 12 years.

Mr Tilson: It has got holes in it.

Mr McLean: My wife made the one that I've got and I will certainly not ever part with that one. It's a beautiful jacket. The number of hours that went into making it, I know it's worthwhile keeping it.

Mr Ernie Hardeman (Oxford): Just in follow-up to Mr McLean's question about how soon could you make a jacket, not being too much into tartan jackets, I wasn't thinking of ordering one, but you suggested that it would take until you could get it registered. Is there a regulation or a law that says you cannot make something out of that tartan if it's not someone's official tartan?

Mr MacNeil: Yes, it will be patented in Ottawa and registered there, and registered in Scotland and patented there with the Scottish tartans authority and the Lord Lyon King of Arms. MacNeil's Scottish Imports, in cooperation with the Scottish Studies Foundation, will have the authority to have different things made from it. Principally, it would be ties and scarves and things like that.

Mr Hardeman: Just going a little further on that, as it is presently not the official tartan of anyone, can that not be utilized by everyone presently, before it is registered?

Mr MacNeil: They would have to have the thread count.

Mr Clement: I'm just seeking from our guest here, Mr MacNeil, some concurrence with some of the discussion we've had. I apologize; I'm not trying to anticipate future votes, but it seems like there is a certain degree of consensus around the table that we will be proceeding with a positive recommendation. I know in my own community our military regiment is the Lorne Scots and we've got a very active Scottish club that around Robbie Burns and at other times does a lot of community work over and above the celebration of Scottish heritage. They do a lot of work for those who are afflicted with cancer, for instance, and so on. There's a whole level of interest in that area.

The other thing that I find, Mr MacNeil, very interesting about this is how Mrs Ross is trying to make this as inclusive as possible, that this is something that we can all celebrate as part of a wider heritage, not just those who happen to have some Scottish ancestry. I would hope that through your contacts and linkages with the Scottish or-

ganizations and through Mrs Ross's efforts, and indeed through all of our efforts as parliamentarians, if and when this is adopted as the official tartan, we really should do all that we can to get the word out that there is this thing called an official tartan, and it would be, I think, something we should celebrate. It's something we shouldn't hold close to our chests. We should get it out there and get the whole community involved in this very positive step. I hope you agree with me in that regard.

Mrs Marland: I have a question for Mr MacNeil, but just before, could I ask you, Mr Chair, if this passes the committee today, when does it become the official tartan of the province?

The Chair: The bill says it comes into force on the receiving of royal assent. The bill itself doesn't address that.

Mrs Margaret Marland: So we report back to the House –

The Chair: With respect to the bill.

Mrs Marland: – and the third reading, normal procedure?

The Chair: Yes.

Mrs Marland: Mr MacNeil, first of all, on my own behalf and on behalf of my constituents, whom I'm privileged to represent, I would like to thank you very much indeed for your participation in this whole process, and particularly your work with the chair of Scottish studies at Guelph university in developing the design. I realize that one important aspect of this is that you've indicated that all profits that you might accrue from the tartan will go to maintain the chair of Scottish studies at the University of Guelph and its program. I'm wondering if you would like to talk about that.

Mr MacNeil: A portion of every yard sold will be going to the Scottish Studies Foundation to help fund the School of Scottish Studies, which is looking for \$1 million to do this. We'll be doing as much as we can through this to accelerate that.

Mrs Marland: Are you going to be one of the manufacturers of the material?

Mr MacNeil: No.

Mrs Marland: I'm looking at some briefing notes that said that you had indicated that all profits from the tartan will go to maintain the chair of the Scottish studies program at Guelph university. Maybe the briefing notes are incorrect.

Mr MacNeil: I don't know where that came from.

Mrs Marland: The reason that I ask you was not to question it but rather to give you an opportunity to talk about it and enlarge upon it. I'm sorry that the briefing notes are incorrect.

Mr MacNeil: We'll be doing as much as we can. The cloth may be woven in Ontario. It's my opinion that the Ontario tartan should be made in Ontario, but it will depend on the quality of cloth and different other factors, how they can produce, in what quantity and so forth.

Mrs Marland: Thank you again for the work that you've contributed to this.

The Chair: I'd like to thank you very much, Mr MacNeil, for taking the time to come to us today.

Is the committee ready for clause-by-clause? Are there any amendments to any section of Bill 132? No.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the schedule carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

I think that concludes our proceedings today. I would like to thank all the members and Mrs Ross for passage of her bill.

The committee adjourned at 1639.

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Official Report of Debates (Hansard)

Wednesday 27 August 1997

Journal des débats (Hansard)

Mercredi 27 août 1997

Standing committee on the Legislative Assembly

Annual Review:
Broadcast and
Recording Service

Semiannual Review:
Clerk of the House

Comité permanent de l'Assemblée législative

Étude annuelle :
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 27 August 1997

Mercredi 27 août 1997

*The committee met at 1539 in room 228.*NATIONAL CONFERENCE OF
STATE LEGISLATURES

The Chair (Mr Joseph N. Tascona): I'd like to thank everybody for coming here this afternoon. The agenda is set out, but there's another matter that may interest some of the members. There are some cassettes arising out of the National Conference of State Legislatures that was held. There had been some interest in the tapes. I just would put it out to you, if there are any members who wish to order a cassette, let the Chair know and we can order those. You have that order form in front of you.

Mr Gilles E. Morin (Carleton East): Did we have any members who attended the conference?

The Chair: No, there were no members who attended.

Mr Alvin Curling (Scarborough North): It's conference by cassette now.

The Chair: That's one way of putting it; it could be. Any questions on that? I think all the forms are there. I'm doing the best I can to serve you.

ANNUAL REVIEW:
BROADCAST AND RECORDING SERVICE

The Chair: On that note, we have the agenda for today. We have the annual review of the televising of the legislative proceedings, Bill Somerville. Then we have the semiannual review of the Clerk of the House on changes in the administration of the House and on the provision of services to members. Claude DesRosiers is here today.

We'll start off with you, Bill, if you can address the committee.

Mr Bill Somerville: Thank you for inviting me again. I've missed talking to you the last year or so. Television and broadcasting recording is working well, I hope to your satisfaction. There's good news and bad news.

The good news is that last month we converted the satellite service into a digital service, which hopefully has caused no problems, very few that I've heard of. But it saved the assembly just less than \$1 million a year by converting from an analog service to a digital service, which puts us in line for the future. You'll see in the next month or so a lot of television services converting to digital. We're one of the leading ones that converted, with

savings, as I say, of approximately \$900,000 per year in the annual budget of broadcast and recording.

Another piece of good news is that we will be converting the audio recordings that happen in committee rooms and in the House that we deliver to Hansard. We will be converting that from an analog system which uses audio cassettes to a digital service, which will save us approximately \$30,000 to \$40,000 per year on the annual budget.

The new digital system with the audio recordings will go straight into a computer and the transcribers at Hansard can use their computers to access the audio without going through an audio cassette and cassette recorders. The cassette recorders we're using now, the youngest is approximately 12 years old and the oldest is 16 years old. We're beginning to have some problems with them. As you may or may not know, we change audio cassettes every five minutes, so these machines get a workout, like 40 tapes per hour for two recorders. That's the good news.

Part of the bad news is that, as I said briefly, the system is getting older and we're beginning to have more and more faults on the system. I think we have to prepare to spend some money to replace some of the aging equipment. Most of it is 11, 11½ years old now. We replaced the cameras two years ago, but the video tape recorders are getting old and we're having a lot of maintenance problems with them.

I don't know if some of you noticed — I know the Clerk noticed — they had a microphone problem on the Speaker's dais on Monday. There are five microphones on that Speaker's chair. We had a problem with one of them, and we can't get a spare part for it; they no longer manufacture that microphone. I'm warning you, when television and electronic equipment get 11 years old, it should be replaced. We worked it out to have an annual life of seven years. We're into 11 years; I think we've kept it working quite well for the extra four years.

The other news — good or bad — as you've probably read in the newspapers is that there'll be at least 19 new television channels added to your choice of viewing by the end of September, the beginning of October. It's going to give the viewers a lot of choices they didn't have before. The unfortunate result is that I think the cable companies will move the Ontario parliamentary service further up the television band. On my service in Scarborough it was moved about three weeks ago. We're now on channel 78 as opposed to 54. Any older sets can't get up as far as 78, so we're losing some viewers there. I don't believe there

is much we can do about it, but hopefully the viewers will buy a newer, more modern television set that can go up to 80, 90, 100 channels.

Interjection: So they can watch us.

Mr Somerville: Hopefully so they can watch you, yes.

Mr Tony Silipo (Dovercourt): Crank up your performance there.

Mr Somerville: That's it. Another event to get over that is when you've got 90 channels — I don't know if you've noticed, you're beginning to get small logos in the corner of your television picture, so when you change the channel it says you're watching CBC or CTV. I think at the assembly we'll have to add that very soon so that the viewer, when flicking through these channels, knows they've arrived on the Ontario Parliament and hopefully they will stay with it and watch.

The other aspects I'd like you to be aware of that I think the broadcasting service should get into is, as I say, replacing the videotape recorders in the near future with a computer server which will give more access to the recordings we make. As you probably know, if you've asked for a recording or a dub to be made of a speech, you normally have to wait until we're finished recording it. We rewind it and then we make a dub in real time for you. Hopefully, if we get into a video server computer recording, we'll be able to do that much faster, a faster turnaround on making dubs and recording and giving you access, and the other television broadcasters and the media people access to the recordings we've made much faster.

That's basically it for me to bring you up to date on what we've done. We still will work under the guidelines that a few of you in this room put together in 1985. They haven't changed, as far as I'm concerned, how we broadcast and record the Parliament. I still try to keep these guidelines and uphold what was put out by this committee in 1985.

Mr Gary Fox (Prince Edward-Lennox-South Hastings): I'm one of these people who got caught up in this digital changeover, just last April. I have a satellite dish. I paid the some \$300 to have the Legislative Assembly channel and now it's gone. My wife was very upset. She phoned the satellite dealer and he's very upset because he says that the government has put funding in for the cable networks to make this changeover but it has made no financial commitment to the satellite companies. Is there any truth in that?

Mr Somerville: Yes, it's very true. Every word you've said is true. The Board of Internal Economy provided funds to subsidize cable companies to receive a decoder for the signal, but that was only to companies — in the breakdown of the scale, companies with more than 6,000 subscribers didn't receive a subsidy; between 6,000 and 1,000 they got 50% subsidy; and under 1,000 they got 100% subsidy. The cost of the decoder is \$1,265, so the subsidy the company got depended on the size of the viewership or the subscribers. That was all done in the month of July.

Mr David Tilson (Dufferin-Peel): There's always criticism from people in my riding and I don't know what the answer is. You've made some remarks and some remarks were just made of people, particularly in the rural areas, who don't have cable and want to have access to the parliamentary channel. The only time they can see it is 1 o'clock in the morning, and they actually do watch it at 1 o'clock in the morning, which I always find amazing, but they do.

The criticism is, and you may be assisting with some of the issues, that there's a large percentage of the population that doesn't have access to cable. I don't know what the answer is but it's an issue which I trust that you and others, perhaps the Board of Internal Economy, are continually looking at.

Mr Somerville: In the past, members have communicated with their local broadcaster and asked them to do it, in particular TVO — I think you're pointing at them — broadcasting question period at 1 o'clock in the morning. They used to do it at 10 o'clock at night but it got bumped back until it's now 1 o'clock in the morning.

1550

Mr Tilson: I only ask that the issue be kept alive because there is a large percentage of the population that doesn't have access to cable. We had an incident, and this has to do with the televised portion of the committee hearings, in the Amethyst Room. I don't know whether it's appropriate to discuss this.

Mr Somerville: Oh, yes.

Mr Tilson: There was a recent incident that occurred in the general government committee of which I was the Chair. On the last day of the hearings some young man somehow got into the centre of the square. I wasn't too sure what he was going to do. I eventually recessed the meeting and that was the end of that.

My concern is that somehow he ended up there. I'm sure the clerk of the committee has reported to you, but that incident may occur again. There may be ways in which that can be stopped. There's an entrance to this square right there. I suppose that's one way. But it's an incident that I would hope, for the televised portion at least, you could be aware of and perhaps there are ways of preventing that.

Mr Somerville: I know of the incident you're talking about. We took your direction. When you recessed, we faded. In the meantime, we cut wide. We would never try to feature; we would play down anybody who caused a public disturbance. It has happened in the audience behind guests and members and we try to play it down by going to a different camera or keeping them out of the shot. But this chap, as you say, got up in the middle of the room and I believe we cut to you.

Mr Tilson: I didn't know what he was going to do.

Mr Somerville: Yes, it's a tricky situation. As a general principle, we try to play all demonstrations down and go to a camera where you don't see the demonstration.

In the House, for example, under the guidelines we can't shoot any demonstrations in the public galleries so we don't put any cameras near them.

Mr Tilson: What I'm asking is that between you and the Clerk's office — I don't know what members of the committee think, but I believe it's an issue that when there's a demonstration in the audience — my understanding is that the only way the cameras can be shut off is that the Chair declare a recess. But there are all kinds of things that the cameras can do. They can zero in on the person who is making the deputation or they can zero in on the Chair or they can zero in on other members of the committee as opposed to people who are making a demonstration, doing heaven knows what.

Mr Somerville: I think the direction would be to go on a close-up of the Chair and take the Chair's reaction to what was happening in the meeting.

Mr Tilson: In my case, it was one of shock.

I'm interested in the maintenance issues. Are you in a position to inform us, to bring the standards of the system up to what you believe they should be? Can you give us any financial information?

Mr Somerville: Yes. We can handle it with this year's budget to keep us going. I'm hoping to replace two recorders this year, which we have in the budget, but next year it will probably be four recorders. Again, good news and bad news: The good news is the new recorders are a quarter of the price of the originals we're replacing.

I think we'll have the budget in the next two years. At least, I hope with your support I'll have the budget, and replace all the videotape machines with the new technology, which is much smaller tape that runs for two hours as opposed to one hour now, and less expensive machines.

Mr Morin: A question that was raised by Mr Fox is that we changed from the analog system to the digital system. Obviously it's creating a void. In other words, a lot of Ontario citizens are not getting the channel now. What do you plan to do to correct that?

Mr Somerville: I personally have no plan and I've never raised a plan with the clerk or the management advisory committee. There is estimated to be 200,000 satellite owners out there. It would be an expensive proposition to supply them all with a decoder and hope that they watch the parliamentary channel.

Mr Morin: As far as the wearing of the equipment, I understand that. It's only normal; it's being used every day and it wears out. Are you putting any money aside? Can you do that, let's say, to replace equipment as it ages?

Mr Somerville: No, we've never had a capital fund for that. We've replaced them as we went. Three years ago, when we replaced the cameras, that was just an item on the budget.

Mr Morin: Are you allowed to do that, to put money aside?

Mr Somerville: I've done that in the past, yes, just a budgetary item.

Mr Morin: Then the blow would not be as hard.

Mr Somerville: Yes. I don't think it'll be extraordinary as the cost of the equipment has come down and we've nursed it for 11 years. We've actually leapfrogged over a generation of recorders now. I think we're fairly happy with the new type of recording equipment. That will

be good for the assembly and will take us back into the forefront.

Mr Morin: If anybody asks me a question like Gary was asked, I'll just say, "We can't afford it."

Mr Somerville: Yes. There's no subsidy for individuals with a satellite dish.

Mr Morin: We're not serving the whole population as it was intended to be at the beginning.

Mr Somerville: Parliament has always been broadcast and distributed via cable. We have never had a broadcast transmission. We've never gone off a transmitter and broadcast to the general public, for example, like TVO or the CBC. Most television stations now are distributed via cable. There are very few broadcast stations coming on because it's so expensive to have line transmissions; it's all via satellite.

Mr Morin: Is there any way we could buy space, let's say, from CBC or any other stations?

Mr Somerville: Yes, it could be done, but I don't know if we could persuade them to put us on in prime time. The space you may end up buying would again be 1 o'clock in the morning. Just as another point, CPaC, if anyone is watching that, the federal legislative television system is covering the Ontario Parliament. We have been on it quite a lot recently, going coast to coast, and they take the signal. But that's cable distribution via satellite; it still doesn't get to the members of the public who are not on a cable system or who have their own satellite dish.

I think in the near future for members like Mr Fox a decoder will come out where you can decode a lot of different signals. You'll probably purchase one and it will allow you to decode the parliamentary channel plus all the other channels. But it's not available at the moment. I think it'll be out within a year because everybody's changing to this digital system. It's a quarter of the cost to the broadcaster.

Mr Curling: I want to follow up on the same question. I encourage my constituency office to watch TV, question period that is, because I find that as soon as there are any announcements in the House or question period, my office is logging a lot of calls. They're asking what it's all about. You know how the beast within this animal is anyhow. We're the last people who hear any announcements. The constituents maybe get a newsflash, but if they're watching the live channel here, it's on that system somehow.

Some of the answers that you're giving, I'm realizing it is only done through cable. If you don't have cable at the plaza in which you're located, you're shot, you're gone. But you're also saying — this is what else I got — that if you go through whatever the other process —

Mr Somerville: Terrestrial, off a transmitter, like you see out at CFTO, the big, tall tower.

Mr Curling: You say that's very expensive. Therefore, there's no way that we can go that way. But you also said CPaC —

Mr Somerville: It's an identical system to us, distributed via cable as well.

Mr Curling: If one hasn't got a cable there, you won't get CPaC either.

Mr Somerville: No, you don't.

Mr Curling: So one is shot there; in other words, you're recommending that I move. In some of those plazas the landlords don't want to get a cable unless more and more of their tenants want it and that's what is causing that problem. It's unfortunate, though, that all the constituents are not able to get the cable TV because, like it or not, it seems a lot of people watch it. I'm sure since Mr Fox is on, the ratings went right up and they are now disappointed they can't see. Some of the questions were answered, but I just wanted to clarify that.

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Mr Silipo: One area, Bill, that I wanted to pursue, that was the question of videoconferencing. Where are we on that? I know that we have been looking at expanding the possibilities that we had for committees to use that —

Mr Somerville: Yes, we have a videoconferencing system now installed in the Amethyst Room and shared with the media studio, which is in and working. I've tested it and carried out videoconferencing through the Clerk's office. We're just testing it, and hopefully it will be introduced to the members in the near future.

Mr Silipo: That would allow us, through the Amethyst Room, to hear deputants from anywhere in the province?

Mr Somerville: Yes, anywhere in North America.

Mr Allan K. McLean (Simcoe East): We fund TVO very extensively. I know that you had some discussions with regard to using their cable company or whatever. Tell us the reason why we can't use TVO.

Mr Somerville: It's at their choice, at their discretion whether they want to broadcast a particular question period. They still do want to broadcast it, but unfortunately it has been pushed back to 1 o'clock in the morning. It's at TVO's discretion what time of day they put it on.

I don't think they're mandated, at least not to my knowledge, to broadcast anything from the Parliament, so it's at their discretion when they run it. I know in the past Speakers have written to TVO and asked them to bring it earlier in the evening. I think it resulted in a half-hour change, maybe four or five years ago, but now it has drifted back up to 1 o'clock again.

Mr McLean: Is there any chance you could have a discussion again and bring it up with them to try and convince them that perhaps —

Mr Somerville: Sure.

Mr McLean: It would be nice to see the afternoon through TVO. A lot of northern Ontario gets TVO where they don't get your channel.

The other question I have is: You're talking about us moving it up. I know in Orillia it's channel 51 before we can get it. There are a lot of people in northern and rural Ontario, even who have cable, who don't have these modern sets in order to get it. If they give it another bump, there doesn't seem to be a priority here for the Legislature. You're buying these towers, aren't you? Or paying to put them on the towers?

Mr Somerville: Yes, we do; in the north, we do. In northern Ontario we subsidize it with TVO. But it is definitely a major problem of having the parliamentary

channel moved up the dial all the time. It's not unique to us; a lot of people are complaining. It has been in the papers recently, like Life Channel, Discovery, all these new channels coming on the air on September 26. They're all complaining because they're so far up the dial.

The general opinion is we'd like all the Canadian stations at the low end of the dial and move the American stations up to the high end. But that's a dispute that has gone on between all broadcasters in the CRTC. No one likes to be high on the dial because there are fewer sets that can receive it. It's an ongoing problem. I think we have to keep addressing it.

Mr McLean: It's strictly because of cost, I presume.

Mr Somerville: No, it's viewers' choice and also the cost of advertising. The lower down the dial, the more viewers you've got and that pays for the advertising. The cable companies want to put all these programs full of advertising low on the band.

Mr McLean: But why is Fox cut off?

Mr Somerville: That's a different issue. That's not the time slot. That's because he's an individual owner of a satellite dish.

Mr McLean: But do you not subsidize any part of that? You subsidize the cables companies, and so the satellites — you say there are 200,000 in Ontario. Is that what you said, somewhere around there?

Mr Somerville: Estimated.

Mr McLean: If you subsidized them, would they carry it then?

Mr Somerville: No, it would just allow Mr Fox to receive it. It wouldn't change the carrying. It's the cable companies. Once they decode this digital signal, then it's up to them where they put it on the dial. They can make us channel 2 or channel 52, whereas Mr Fox could put us on any channel he wanted if he receives it himself on his own dish in the house. But I don't know how many channels you're receiving now. How many do you receive?

Mr Fox: Probably 75 or 100. But the thing is, can we not make some kind of an agreement with the satellite company to use the decoder that I have now?

Mr Somerville: It's not the satellite company; it's the decoder you have. If you have a General Instrument decoder —

Mr Fox: Yes, I do.

Mr Somerville: — you could probably receive — it's a General Instrument?

Mr Fox: Yes.

Mr Somerville: Maybe we could have this discussion outside. General Instrument is the manufacturer we have bought from. It may be possible to tune yours in to receive the parliamentary channel.

Mr Curling: It seems to me that what we're discussing, if you have any user fees, you have access to this cable, to this channel. Do you see the possibility of one day — right now, underneath our desks there are so many papers and what have you — having a monitor one day at the computer for access to Hansard, access to reports, on the desks of members of the House? That itself could eliminate a whole bunch of things and the recall would be

just wonderful. Do you see that coming soon? The Clerk seems to have an answer.

Mr Claude L. DesRosiers (Clerk of the House): The ball on that one is more in your court I think. When we talk technology — and I'm not a technological expert by any means — everything is possible, Mr Curling, but it's a question of whether the board wants to make this accessible. Do the members want this to happen in the chamber, because it would change the nature of the chamber quite a lot.

What you're talking about is a very wide issue and we have gone a way down that road, in the sense that we do produce less paper than we used to in our parliamentary documents. We print fewer copies of Hansard every day than we used to. We print fewer copies of the order paper, fewer copies of the votes and proceedings, and so on. But we still have maintained the standing orders, which are very much present in everybody's minds these days.

Insist that the Clerk of the House deposit on your desk every day a copy of Hansard and a copy of the order paper and a copy of the votes and proceedings. Unless that is studied by a parliamentary committee and the parliamentary committee decided to change that way of doing things, it's not something that we can undertake on our own, but it's something that's possible.

Mr McLean: The new satellite system that's going to be coming in, where they're trying to take over from cable somehow, or you're going to be able to get all the cable channels — I'd like some clarification on that. Is that the way it's going to be? If I lived in rural Ontario or in a little village that doesn't have cable, would I be able to buy into this new cable satellite system?

Mr Somerville: Again, this is almost like Mr Curling's touching on the future. The future will be, for people who don't have cable, you will be able to get your television signal there, your telephone line, and the parliamentary channel is part of it. A test is being done in London, Ontario, where we are being delivered into people's homes via the telephone line and seemingly the pictures are wonderful. I haven't seen them but you just have a black box on your telephone and the black box feeds your television set and, rather than using cable, using the telephone lines. That will be the future, as you've probably read in the papers. The telephone companies are now getting into the cable business and into the television business, so in the future you will receive it through your telephone line.

Mr McLean: Whose experiment is this?

Mr Somerville: It's Bell Canada's experiment. I can't remember the number of homes in London, Ontario, but it's a fair number where they're experimenting with this system.

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Mr McLean: So if I lived in rural Ontario and don't have access to cable —

Mr Somerville: In the future you'll get it via telephone.

Mr McLean: Pay-per-view or something, isn't it?

Mr Somerville: Yes, you'll be able to get everything, including a computer link, via your telephone line.

Mr McLean: Including Queen's Park.

Mr Somerville: Yes.

Mr DesRosiers: On this point, just to make things clear, what Bill's directorate is charged with is producing an image and then making it available. We pay to give it to a satellite company which beams it up there, but that's as far as we go. In order to go further, it would be a very expensive proposition, and most parliaments that do television are content with doing that. Some don't even go that far. For example, in Quebec City all they do is produce the signal and they say, if the population wants it, there must be a company out there who'll pay to take it, and they find someone. So they don't even pay the amount of money that our budget pays for to beam it out on a satellite, but there are a few companies that take it on cable and there's another company that takes it on satellite.

We pay. To do more than that right now would just be too expensive, and the board has decided, but if you want to talk to your board members and maybe change this, this all can be done. But what Bill is talking about is, in the future there will be more and more possibilities out there to make it easier for companies to take our signal. It's available. Any company that wanted to take our signal from us at no cost to us, be my guest. The signal is there. We produce it; do with it what you want. It is not for me to say, but their preoccupation is that they want to sell it somehow. They want to make money. It's mostly people in business and they want to make money and their judgement is that they're not going to make a lot of money on distributing this service.

Sometimes it's worth the while of a businessman to distribute something that they're not making money directly on if it's tagged along with a package of other things that they are making money on, but this is the future. Right now we're in a situation where we're beaming this thing out on satellite, and it's saving the assembly close to a million dollars a year with this new system.

It's not really changing Mr Fox's life much because it was cable before, and it's still cable. To go to the technology that Mr Fox and other people in the province have decided to go to would be a much more expensive proposition, which the board is not ready to go into yet, and we're hoping that the future will bring us — but there are, what Bill was saying and he's going to talk to you privately, probably ways that people in your situation can go about ensuring, at a cost of their own right now, that they get the signal.

The Chair: Thank you very much, Mr Somerville. If there are no other questions, I am very pleased with your presentation.

SEMIANNUAL REVIEW: CLERK OF THE HOUSE

The Chair: The next order of business is the semiannual review of the Clerk of the House, Mr DesRosiers.

Mr Claude L. DesRosiers (Clerk of the House): It's a pleasure to be here and I thank you for inviting me. The term "semiannual" is used loosely, because I was checking in my files here and I said, "I don't think I've appeared before these people for a long time." Actually, the last time I appeared in this capacity was on June 16, 1993; so it's been a little while.

I'll use this occasion, but I have appeared before this committee on another subject recently, in the last year and a half anyway, and that was on security in this Parliament. We had a long in camera session when this committee was considering the question of security which had been sent to it by then-Speaker McLean. It produced a report which was adopted by the House and which is now being implemented by the Speaker and by the Sergeant at Arms and so on, and I believe the Sergeant at Arms appeared before you recently and explained at what point this is. I'll be speaking towards security myself in a little while because it's something that's very dear to my heart.

I'm going to start by briefing you on what I do here generally: who I report to and what I do. I've been here for 11 years. Actually, the interview took place in the room next door on September 5, 1986, so it's close to 11 years. There was a panel of members. It was a minority government. It was this standing committee that interviewed me, and Speaker Edighoffer had joined it to interview the various candidates. So I was interviewed and I was fortunate enough that they offered me a job. I must say I haven't regretted it at all. I was employed by the House of Commons at the time I came here. I came to a very different venue but a very similar one too, in a sense, and I've enjoyed every minute of it.

My job here is the same as that of clerks all over the Commonwealth. We have a dual role. The most important role is to advise the Speaker and the members on parliamentary procedure, and that happens in front of all of you in the House. My colleagues and I at the table try to help the Speaker and members who have questions of procedure. The other role is administrative. In that role it is my duty to help the Speaker run this place. It's a wonderful job, because I don't think I'd be happy with just the procedural side and I don't think I'd be happy with just the administrative side.

Clerks learn this on the job. You learn to become superspecialized in parliamentary procedure, and at the same time it's very important to familiarize yourself with parliamentary administration, which is a very different kind of administration from even general public administration. It's certainly not private administration and it's not pure public administration either. It's very different.

In that role I meet with the Speaker regularly, I advise the Board of Internal Economy and I chair a committee which is called the management advisory committee, referred to in short as the MAC. It is comprised of the Speaker ex officio, the director of the library, the controller, the Sergeant at Arms, the director of legislative services and the executive director of building services. Those five people sit with me on MAC and we do what I call the day-to-day administration of the assembly, guided by the

policy that is adopted by the Board of Internal Economy. That's the way it works. I am here to serve you.

I don't know if you're familiar with our mission statement, but I have been working very hard and diligently to make sure that staff around here understand that the members are not here because of the staff but the staff are here because of the members. Anything we can do to help you, from anyone — members always like to know that the Clerk is nearby because they can come to the table and say, "Mr Clerk, this is not going well." I must say, this is fine. This is the way it should be. If you have a problem, you can let me know directly. You don't have to phone somebody in some office someplace. I'll make sure it happens. That's my job.

I have various policy fields that interest me more than others. Of course the procedural one is a constantly important one. On the administrative side, I just might bring you up to date on a few of the programs that have been more time-consuming than others.

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The first one I would refer to is restoration and renovation. When I arrived here in 1986 the roof was leaking, the stonework was literally falling on the grounds around — it was quite dangerous — and the windows were rattling, all this because it was a 100-year-old building which had never really been looked after. This is normal in parliaments all around the world. Parliamentarians do not relish the thought of devoting a goodly part of their budgets to an old building which is usually very expensive to maintain. But it was my duty then to try and impress on the people here, on the parliamentarians then, that something had to be done.

You've all visited my office at least once anyway. You come into it to get sworn in at the beginning of a Parliament. On the right-hand side of my office there's a gorgeous window at the end and there's a couch. So people would be seated on the couch and I'd usually sit on a straight chair opposite and I'd point downtown. Right down University Avenue there's a great big white tower which we all know is the Bank of Montreal tower. I'd say to them, "You see that tower?" "Yes, we do." "You understand that I don't know if that tower is going to be there or in what state of repair it's going to be in 500 years' time, and I really don't care. I'm sure somebody else is looking after that. But it's my job to try and impress upon you that this building has to be here in 500 years' time and it has to be a living building. It can't be turned into a museum."

Some parliaments are turned into museums. They're awful places. They're wonderful as museums, but they're not very good as parliaments. The trick with a parliamentary building, even though it's 100 years old — this is another little bugaboo of mine — 100 years old is not necessarily old. It's old for a lot of Canadians, but we live in a very young country and it's not very old for other people around the world where some of their buildings are 300 years and 400 years old.

This building has to be maintained in a way that it will continue to be a living place. We have to preserve its

general character, but we have to keep on improving it in a technological sense so that members can have computers and members can have the latest technological aids at their fingertips. That's the challenge that's involved.

I must say it did not take a lot of convincing. Members saw the light and very soon a special committee of members was created under the leadership, first of all, of Speaker Edighoffer, followed by Speaker Warner, and a master plan was produced. Any of you who haven't seen this master plan, it's a master plan that's been presented by the committee, it's been adopted, and it's our roadmap. It's what we follow in order to make sure that this building is kept up.

Then it was decided, and the right decision was taken, that the first thing to do was to secure the outside. The inside could wait, but the outside had to be done. That was a \$30-million project that came in under budget at \$28 million, so we now have a 100-year-old building in which the stonework is perfect. An added touch to the stonework is that when we went out to try and get people to do the stonework, we found that no one in Canada could do it. So an added benefit to this program was that we imported people from Scotland who came and taught some of our people at one of our community colleges how to do this. They did the work as well, but they also taught apprentices how to do this. So we now have people in Canada who can do stonework. That was an added benefit to the program.

About half the windows, I would say, have been replaced. The others have been repaired. So the exterior is secure and slowly we're proceeding towards the inside. Because of the fiscal realities of the province and so on, the board has decided that what is to proceed now is the essential things.

What we're doing right now is what we refer to as life and fire items that have been recommended by the fire department and so on. Presently we're in the process of putting in fire escapes through the chamber. The chamber is the most important part of this building and it's a fire trap. It's literally a fire trap. Think of where you sit in the chamber and how you get out. Probably the closest way is through that front door, through the glass doors at the entrance. Just imagine, if the House is full, the funnel of people trying to get out of there in an emergency. Also, it's a worse fire trap for the people in the press gallery and so on. So that is being attended to and that is what will proceed for the coming year.

The board will be considering at its next meeting — because the board is still studying the 1997-98 estimates. In the 1997-98 estimates there's a proposal as well and it will be for the board to decide. There's a part of the fifth floor here which has been disaffected for the last — Barbara Speakman could give me the exact time, but let's say for the last 15 or 20 years it has been disaffected. I might encourage the Chair, if you want to go on a tour — it's a very inexpensive tour — I'm sure someone would be more than happy to take you up to the fifth floor and show you what it looks like, because I think one of the things that

members should be familiar with is the building. It's quite a vast expanse of space up there that's totally unused.

A budget has been prepared. This is all in the master plan, but we've taken from the master plan and this year a budget has been prepared for the board and they will be deciding whether or not it's wise to proceed this year, but it's something that will happen. Another thing that would have to be decided once, if ever, it's done, is who goes there.

Staff is presently going to be working and the next two years will be occupied, I think, very closely with looking at this building for what it will look like, to prepare it for what it will look like after the next election. As you know, we're going from 130 members to 103 members after the next election and therefore a possibility will exist probably to have all of the members come into the building. A possibility may exist to break from the policy that has existed up till now that a parliamentary assistant, once he or she is appointed parliamentary assistant, loses his or her office in the building and has to make do with a ministry building. Maybe room can be — a lot of things, and we're hoping that the fifth floor will be finished for that time. But that gives us two or three years to work with and hopefully we can do that.

Another possibility would be to put the press up there. If the press were to go to the fifth floor, then that would vacate a whole bunch of prime office space for members. But these are all possibilities and the board will be considering this and members will be consulted on how that happens.

That's the restoration-renovation project. The total cost of making this place like new in all its aspects is about \$100 million. I would say that first project with the exterior was \$30 million and we've spent some moneys — I would say we're still talking about \$60 million left. Really there's no rush because, as I said, the exterior is secure, the roof doesn't leak any more and it's not deteriorating. That's the benefit there.

I'm going back a few years here, but I think it's important to spell this out. One of the main things that has really been preoccupying me and I'm very happy with this, is the security issue. Speaker McLean will know, as did other Speakers. My first day on the job here, the first parade I was in in 1986, I think we left from this room, there was Speaker Edighoffer and Tom Stelling, whom you all know. A gentleman showed up, walked in the door here and he had a gun on his side. I said, "What's that?" He said he was Corporal So-and-so and he was going to lead the parade. I'd never seen a gun in a Parliament before, so I was a bit surprised. It was a long process. Shortly after, I said to Speaker Edighoffer, "Why is the OPP here?" He said, "They've always been here." I said: "Where's the piece of paper? Where's the contract?" There was none.

These things take time and so finally, through discussions and so on, Speaker Warner was able to enter into a memorandum of understanding with the then Solicitor General to make sure that we were paying for the service and we knew what we were paying for and also to permit

the Speaker, because the Legislative Assembly Act says the Speaker is the person responsible for security. Therefore, it was important that the Speaker try and do something about security.

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We all understand that security is not an exact science and, in most cases, all you can do is do the best you can to try and prevent some unfortunate incident from happening. But at least the Speaker has to be able to demonstrate that he has done that. Up until the mid-1980s, I don't think Speakers were in a position to do that. We've remedied that. This committee has studied security at the request of then Speaker McLean. It produced an excellent report; that report has been adopted by the House. We've hired a new Sergeant at Arms. He reported to you a while back and he's in the process — this will not be a costly exercise because basically the same budget we had before will be used now.

The only main difference is that the Speaker, when he now gives an order relating to security, will have employees reporting directly to him on security matters, and that will be the main thing. One of the recommendations of this committee was to create a security committee to advise the Speaker on security and, therefore, members will have an input in that.

Gentlemen, I'm going to stop here. I could go on to different programs, but I don't want to bore you. I'll just turn it over to questions now and that will bring up other subjects, I'm sure.

Mr Curling: Relating to the interior of the office, in my office, for instance, over the years the air-conditioning has just been atrocious. With the kind of equipment that is put in there, each time I'm having a meeting, I have to turn the sucker off because it's competing with all the debate. Is anything being done about updating all of that? Because year by year by year we have the same thing?

Mr DesRosiers: There hasn't been anything directly. I know of what you speak because I have the same equipment in my office, which is turned off 99% of the time. I'd rather be very warm than have that noise going on all the time; it's awful.

There is better equipment on the market now. You know the size of these rooms. They're very big rooms, and even if your office is not as big a room as this, you've got a high ceiling and it's not an easy room to climatize. But there is better equipment. We've been experimenting with two units in the boardroom. In the Speaker's boardroom, there are two very quiet units that we've experimented with. They're expensive, but those are units that could be used to replace units in members' offices. The other alternative, of course, is not a perfect one either. A lot of members have window units, but that has the unfortunate consequence of defacing the building. We'd rather you be comfortable and the building be ugly, so those are provided.

But the answer of course is what's happened to this room, for example. The answer is to install air-conditioning in the building. That is part of the \$100-

million project. Eventually it'll happen; I mean eventually it'll happen.

Mr Silipo: We have to get re-elected another five times.

Mr DesRosiers: But in the meantime we are starting to look at new equipment to replace the equipment that you have right now.

Mr Curling: Yes. I know when you came in 1986 and I saw this restructuring coming on, I said to myself, as Mr Silipo said, I wonder if I get re-elected if I'm going to enjoy some of this wonderful building itself, and when it came and they didn't finish and the next election came around, I was worried again that maybe they were going to fix it up for somebody else. I'm enjoying the outside, but inside I'm not quite yet enjoying it. The air system inside is not really all that great. Sometimes I say to myself, "Turn the air-conditioner off," but the air system really gives me a hell of a headache afterwards.

But one quick other question I'd ask — some people are not quite happy about that new uniform that you have, the new uniform for the pages. Who designed that?

Mr DesRosiers: Oh, yes. You're talking about the ushers?

Mr Curling: Yes.

Mr DesRosiers: Listen, I asked the same question. The main part of the uniform you're referring to, I guess, is the tie that everybody wears.

Mr Silipo: It's a nice tie.

Mr DesRosiers: I think the tie was chosen by Mrs Pat Farmer, who's the assistant person in charge of the pages.

Mr Silipo: She has good taste.

Mr DesRosiers: I was taught by my mother very early on not to criticize other people's taste and there you are. If someone had asked me to choose the tie, I would have refused. I was happy that somebody took that on, and we'll see.

Mr Tilson: I have a statement and then a question. The statement has to do with security. I know there have been committees. I think I substituted for someone two or three years ago on a committee, and I'm sure there have been ongoing committees for years and I know it's an ongoing issue. Certain types of security can be very costly. I guess in the little bit of experience I've had, having been to Ottawa and, as you know, I was over in London, England, and I looked at the security there. I haven't been to Quebec City, but I hear of what they have there and of course it took a terrible incident to develop security in Quebec City.

In my view — I'm just adding to the list because I know you're told all the time — security here is terrible. Even such simple things as having people for crowd control, having people enter by one door, I know there's all that fear of having this as an open society and I know these debates go on and on and there are arguments for and against, but I hope we're not waiting for an incident to happen with staff or with members before we do something. Having said that, I know that these types of statements have been made many times by others and I'm just adding to the list.

The question I have for you has to do with the running of this place. You alluded to the fact that there's going to be a reduction of members of this Legislature after the next election. I'm trying not to get political, but there are facts going on and the facts are that ministries have reduced their budgets substantially, as low as 30% up for the providing of services, doing things differently, perhaps providing less service. Businesses are doing things differently. I don't want to provoke my friends on the other side, but these are facts that are going on. Restructuring is going on, not just in governments but in all kinds of governments, in all political parties and business.

My question is whether you can provide us with information alluding to the fact that we are going to have 27 fewer members and alluding to the fact that, in my view at least — perhaps not in others — this place cries out for restructuring.

Mr DesRosiers: That's an excellent question. I'll just address very, very briefly your statement on security. I want to reassure you that the Speaker is looking at that. We're very, very close to presenting to the Speaker a policy that will then, if the Speaker agrees, go to the security committee, which will deal with access to this place. As you know, there is no perfect security system. You're right, the system in Quebec City is an extremely tight one. The system in Ottawa is sort of middle of the road and we're bottom of the road. I'm hoping you will see that the Speaker will be adjusting the system to the middle of the road very quickly. I'm hoping to see those things happen very soon, and I'm pretty confident that they will.

To address your other point, last year the Board of Internal Economy asked — well, let me preface this. The budget of the Legislative Assembly of Ontario I separate into three.

There's a top section, which comes under my direction, which we refer to as the administrative part, the Office of the Assembly, and I'll just throw out the figure \$40 million. It is or was roughly around \$40 million. Then there's another section which deals directly with the members. Those are the caucus expenditures, those are your global budgets, your salaries and all that. That's roughly another \$40 million.

Then there's a third section that deals with the commissions, which have been proliferating in the last 10 years, but they're there. The Integrity Commissioner, the auditor, the Ombudsman, the Commission on Election Finances, Elections Ontario office, all those good people fall into that third part of the budget of the Office of the Assembly.

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I will address your question dealing only with that top part, for which I'm directly responsible.

Last year, the board asked for a 20% cut. We gave them about a 33% cut in money. I would say we had about 380 people working, reporting to me, and there are less than 340 left. Make that calculation; that's a good drop. That's not to say that that's the end of the picture. The board has asked for another 5% this year, 1997-98, and we will give the board 5% because restructuring is continuing.

We're also trying to effect savings. As Bill was saying earlier on, through technological means we'll be saving roughly \$1 million this year — maybe not totally this year because it came into effect at the beginning of July, so we won't be able to recuperate the full \$900,000. Five per cent is \$1.624 million, I think. So we will be effecting a further reduction this year of \$1.624 million.

Not to say that we're going to stop there. We're constantly looking at efficiencies, we're constantly restructuring, and I have put on the order paper for the management advisory committee the creation of a committee which will be formed to look at the impact of the reduction of members.

I agree with you. Off the top of your head you say, "Well, reducing 27 members has to mean a reduction of work," and I guess that's true, although sometimes it's not as evident as it might seem because sometimes you need the same amount of people in certain tasks for 103 members as you would need for 130 members. But we will be looking at that and we will be coming forward with further efficiencies, I'm sure.

Mr Tilson: Are you having discussions or reporting to the Board of Internal Economy on those topics?

Mr DesRosiers: That's correct.

Mr Ron Johnson (Brantford): My question is nowhere near as significant as Mr Tilson's, but it's more, like I said, a need to satisfy curiosity. You mentioned earlier the fifth floor. You were talking about the fifth floor and possible future renovations. I had the opportunity about a year ago, I guess, to tour the fifth floor. I was up there and I was amazed at all the stuff that was up there. You had everything from old furniture to old pictures. In fact I found one up there, a 1924 picture of the Legislature, and I hung it in my office. I don't know if I was supposed to do that or not, but I did. But I'm just curious, I suppose. Is there an inventory of all of that?

Mr DesRosiers: Yes, there is.

Mr Ron Johnson: So I'm going to get caught.

Mr DesRosiers: Not for the picture, I'm sure, no.

Mr Ron Johnson: Some of it may have significant historical significance, I don't know, but what do you do with all of that stuff there? I guess the other question is, whatever is up there that is unusable or is defined as junk, why is it still there? That would be another question.

Mr DesRosiers: That's a good question. Let me go back a bit and just try and illustrate it. Eleven years ago, this building was run very differently. That was the times then. The times have changed. The Clerk had very little to say in what went up there. A lot of it probably ended up there because someone in the government said, "Let's put it up there." But that's not how parliaments — and members realize that things have changed and so on — that's not necessarily how parliaments are run.

The furniture up there right now, to the best of my knowledge, is inventoried. We know what's up there. What's going to happen to that furniture will come into the plan for whatever happens to the space. I'm sure that a lot of solutions can be accommodated. You see, this is where it becomes interesting. If you want to make interests

knows as to the future of that furniture, I mean if you, on touring that, identified pieces of furniture and you say, "Oh, that's neat and maybe it would be nice in the corner of my office or something," systems can be put in place for that to happen.

Mr Ron Johnson: I can't just go up there in the middle of the night and take it.

Mr DesRosiers: I don't think so. The reason it's up there is probably it was felt by people at the time, "This isn't useful to me." That's the nature of changes in time and history; what was not useful to someone 20 years ago, when it bounced up there, might be found to be useful to someone today. Those things can happen.

Mr Curling: I just want to raise two points, one that Mr Tilson put forward so well and his concern has been expressed. I'd like to express some concern too, because although we want the security of this building maintained, I think I've seen a bit of improvement in the way things are. There's a balance you're trying to obtain of how people come into this building. At times someone would arrive at my door upstairs and I wondered how the dickens they got through.

In Speaker McLean's time you were looking at the panic button stuff. I always wondered how they would have a panic button that I could reach. How am I going to get to it? But some improvements have been done in that respect.

I think we have to keep monitoring that very closely — and I say that with all the delicacy that is required to do so — because some of us have portfolios, either critic or ministry, that attract certain individuals who are emotionally charged at times. Sometimes they're moved that way. I had human rights for a long time and I was quite concerned about people who came in to see me. I just want to say that one has to continue monitoring that aspect of it, who comes in. It has been improved, but I still feel something more could be done. I'm not accusing anyone; I'm just saying it's a difficult thing to do.

On the personnel part of the security, there are individuals I know have worked with us a long time and have been on a different kind of contractual arrangement and know the place. Even when the changeover came the other day, it was quite a vast difference. I hope some of those individuals are around who contribute to good security because their knowledge and intimacy of those around us help. I hope we don't lose them quickly just for change's sake and because of contractual arrangements that are different, the cost-saving factor. I hope we are sensitive about that.

The last point I want to make, and maybe these are more comments than anything else, is access to the chamber. Often individuals who come to the chamber — sometimes we're so strict in what we do. Just recently some folks were here; you must have seen them. They were martial arts people from England. They had come in but they were caught at a peculiar time. They wanted to watch the Legislature and they got 20 minutes to watch it, but somehow they were caught up in that warp of questioning the Speaker's decisions, so they didn't get to see very

much. However, the place was empty when they had to leave in 20 minutes. When I asked the usher, "Why can't they stay?" he said, "Their time is up."

Sometimes no discretion is used, because people are lining up outside, the place is empty and the flow is so slow, but it causes so much friction inside the House, unnecessarily. Who gets the charge of that is the Speaker, saying, "Why are you holding things up when hundreds are out there wanting to come in?" Or some people are asked to leave when they would like to stay a little longer. I wonder if anything could be done about that. It sounds rather simple, but so many people call me about that.

One quick other thing too is the utilization of the chamber, the Parliament Building itself, by the public. I'll give you an example, because it's easier for me to explain that. I know that Black History Month was a time when they wanted to use the Parliament Building to have displays. Are there any rules or conditions on how that can be used, in other words, if Black History Month is trying to put pictures on display in this place?

I just want to make those comments. If there's anything in there you can comment on, I'd appreciate it.

1650

Mr DesRosiers: The point you raise about use of the galleries is a very tricky one; it's not an easy one to solve. The group of people who have responsibility for that is the interparliamentary relations group. They get requests from school groups and so on and they try to organize it so that people come in. What they have done is they have devised a tour. The tour is split up into so many time sectors, so they try and make it work.

I noticed the group you were talking about from England the other day and I didn't know that problem had arisen. But they probably booked a tour. The tour is like any system: you're 10 minutes here, 20 minutes there. I quite agree with you, that because the gallery was empty on that day and because there was nobody waiting to come in and replace them in their seats, they should have been able to express that view and say, "We want to stay an extra 20 minutes." That should have been able to happen. Why it didn't, I don't know. It might have been an error in communication of some kind. But that should be able to happen.

The other point you raise, that you say ends up having to be solved by the Speaker, and that's not fair — and it's true it's not fair. The other day, to use an example that happened last week, it was brought to the Speaker's attention that the public gallery on the right-hand side of the Speaker was empty, but it was known that there were a lot of people lining up to get in. That's a fact. The Speaker said: "Yes, that's fine. The gallery will fill up, but it takes time." If people wanted to come to attend the House at 1:30 and wanted to start being registered at 1 o'clock, they'd be there for 1:30, but just so many things are possible to keep the balance between security and open attendance.

The Speaker said to the member complaining: "Wait a minute. I'm certain the gallery will fill up," and that's exactly what happened. It takes a bit of time sometimes

for the process to happen, and that's part of the process that has been addressed by other members.

Ten years ago that would not have happened, because there was freer access. But the members have decided that there should not be as free access, that we should give out cards, that we should process people as they're coming in — it's an awful word; I hate using it — know where they're going in the building and so on. When people want to go to the gallery — that takes 20 seconds per person, and when 100 people want to get in, it takes the time it takes. That's the unfortunate side.

It's not as if you're talking about things we didn't fully realize. We realized them. I appreciate your bringing it up, because it always helps to stimulate us to try and perfect the system, which is what we're here for. Anything we can do to help, we will. But that is what happened the other day.

One more point: As to the last point you brought up, "Are there rules regarding the use of the building?" yes, there are rules regarding the use of the building. Those rules were adopted quite a while ago. I think the latest amendment to those rules would have been in 1994, if memory serves me. They were adopted by the Board of Internal Economy. They generally dictate how the building can be used. The Speaker is charged with applying those rules. When a request arrives it is usually handled according to those rules, and in any cases where the people who are responsible for applying those rules have any problems at all, they will address those questions to the Speaker.

Mr Fox: I agree that there have been some changes made in security here since I came to this building. You talk about putting people through the process. I firmly believe in that, because there is a safety factor here for the building and the people who work here. I feel maybe we could do a little more on it yet to tighten up security in the building because, being on the fourth floor myself, I have questioned people who were roaming around up there, appearing as though they didn't know where they were going.

Mr Curling: Lost Liberals.

Mr John R. Baird (Nepean): No, they stay on the third floor.

Mr Fox: They stay on the third floor. We're all right there.

I think that's an issue we could spend a little more time on, and perhaps discuss it. And really, the mandate of that comes more under the Sergeant at Arms than you?

Mr DesRosiers: The Sergeant at Arms reports to me, so you can ask me the question. That's fine.

I'll be very clear in where we're going with this. My dates might be a bit off, but I think shortly before the end of the calendar year 1996, the House adopted a report that was prepared by this committee. That made it law, in effect.

It's an excellent report; I forget how many points. The first two or three items in that report have been put in place. The first one was to form a security advisory committee to advise the Speaker. That was put into place. The

second one was to hire a sergeant. The third one was to ask the sergeant to prepare a plan and to move the OPP out.

What has happened so far is this: You all know the sergeant was hired; he came on board and prepared a plan and so on. It was not an easy thing. On August 1 of this year, ahead of schedule, the OPP left. There's no longer an OPP officer in here, except for the OPP officers who come in to provide security to the Premier and to the Lieutenant Governor. That's a separate detail; they have nothing to do with us. They walk in with the Premier, and that's it.

As far as securing the building, the OPP left. They left only after we had gone through an exercise where we had advised all the people working here that we were going to do this, that they were all in effect going to lose their jobs, but that we would be hiring. So they were all given notice, but it wasn't a very scary notice, because these are people who work for the Solicitor General, and it was understood that if they didn't get a job with us, they would continue to hold a job with the government, which is what happened.

The complement — the sergeant could be more precise with the numbers here — is in the 40s. We chose 40 to 50 people, who are now our own security people. We've chosen them exclusively from that list of people, referring to what Mr Curling was saying earlier, who worked here before, people who have experience with the building but who were desirous of working for the Speaker — not working for the commissioner of the OPP any more, but working directly for the Speaker. That happened before August 1.

On August 1, the changeover took place. The OPP left and the sergeant took full control of the building without the benefit of the OPP, using the people he had just hired.

The next step is, as I said, the sergeant will be coming to me, hopefully by the end of this week, at the latest by the middle of next week, with a plan. He has been studying a proposal, what I refer to as the access proposal to the building: what doors will be open to the public, what doors will be open to everybody, what doors will be limited to members and staff and so on. That plan will be prepared and he will give it to me.

I will study it with him. I will maybe recommend some changes to him; I don't know. I will at that point bring in Deborah Deller, who is my assistant, and we will look at it. When we're satisfied, we will then go and see the Speaker with it, because it's his plan. We're preparing it for him. Then the Speaker will study it, and he will probably want to make some changes.

Then he will take that plan and present it to the advisory security committee, to seek their advice on what the plan should contain. Then it's up to him — the security committee won't get to approve this plan, but the Speaker will seek the advice of the security committee, and every party has a member on the committee. From memory, I think for the Liberals it's Mr Morin, for the Conservatives it's Mrs Marland and for the NDP it's Mr Christopherson. They will look at this plan, they will make suggestions to the Speaker, and then the Speaker will implement it.

1700

Once the Speaker implements that — and it shouldn't be very long — you will see major changes. You will see what I have been asking for all along. Because all along we've had people in the building doing security, but we haven't asked them to do anything. We have people right now at every door, but they aren't charged with any specific duty as far as access of the building is concerned, as far as challenging people, "Where are you going," or "What are you doing here?"

Mr Baird: They do to me.

Mr DesRosiers: Because you look so young, Mr Baird.

That will come into effect rather shortly. Your caucuses will all be advised well in advance of what it's going to contain. That is the next step.

The next step after that is to look at access, how this place is controlled. If you visit Ottawa for the weekend and you have some family and friends and you say, "While we're here, let's go visit Parliament," you will be directed to a door underneath the Peace Tower. You might have to line up there.

Mr Ron Johnson: I was there Tuesday; it's the same process.

Mr DesRosiers: Yes. You will go through a metal detector. You will have to. You won't get in the building unless you go through this thing. I'm not saying our plan will have those details; I'm just saying a plan is being prepared. The Sergeant at Arms has been directed by the Speaker to prepare a plan — he will be producing that shortly — which will direct how people come and out of this building.

In most Parliaments in the world — the Speaker and I were visiting Ottawa in February of last year, on the day that an incident you've all read about happened. We were in the building looking at security while this man decided he was going to try to drive up to the front door of Parliament in his Jeep. When we came out of the building around 11:30, a bunch of police were all over the place and the wreckage of this Jeep was at the front door.

The Parliament Buildings in Ottawa are under major repair right now; on the best of days it's not an easy thing to get up to the front door in a Jeep. By the time he got up the steps, all his tires were completely shot. But can you imagine trying to ram a Jeep up the front doors here, how easy an operation that would be? Even I could attempt that, I think.

The building has to be looked at, it has to be addressed, and under the direction given by this committee in the report that was adopted by the House, the Speaker will be looking at it.

Mr Peter L. Preston (Brant-Haldimand): The Jeep wouldn't pass a metal detector, though.

Mr DesRosiers: Well, a big metal detector with a —

Mr Fox: Do you believe we can do all this with the cost savings and provide a better service?

Mr DesRosiers: I sure do. We're not talking about expensive things here. To restrict doors for people is not expensive. It doesn't cost a penny. We're not hiring any

more people than we had; we're just going to direct them to do things.

I don't have it with me, but you know that staff all have ID cards. That system is in place. It's already paid for. We're not talking about any new equipment. What the Speaker is going to do is go under the existing budget. There might be some equipment that will have to be purchased, but it will be under the existing budget.

Mr Baird: Thank you very much, sir, for your time this afternoon. I had a question for you. It may be a difficult one to answer, and you could certainly go back if you had any thoughts after the fact. If I had a constituent who called me and said, "John, I'd like to bring in a hundred of my friends and cause a disturbance in the gallery, forcing us to get kicked out. Would I be allowed to hold a media scrum in the hallway after the security removed us from the chamber?" would I be able to tell him yes, he could?

Mr DesRosiers: The policy in this building is that demonstrations inside the building are prohibited. I will leave it at that.

Mr Baird: If, though, people were to plan purposely to bring in a crowd of 100 people to undertake what some might call an orchestrated protest in the gallery —

Mr DesRosiers: Mr Baird, I will just go back to the general policy that's being put in place here. What is going to happen in the next couple of weeks is that the Speaker will be looking at an access policy which will cover all these points.

Mr Baird: Would it specifically cover that point? I think there's some concern that people deliberately come into the chamber to cause a disturbance and then they're escorted out. On occasion the Speaker has even asked — they've been arrested in the gallery and then they go right out into the hall and hold a media scrum on our facilities. I guess this causes concern to a number of members.

Mr DesRosiers: What is about to change in this building is that the Speaker, for the first time in the history of the Ontario Parliament, is about to gain complete control over security, which he has never had before.

I must say that the proposition you're putting forward to me is hypothetical. I will say to you that the proposition you're presenting is not a very good one. Members should not be encouraging demonstrations in the galleries.

I'll tell you this incident that happened a number of years ago; it must have been in 1988 or 1989. It's probably the moment I've been the most scared in the House. There was a group of demonstrators that filtered into the building and assembled, because there was no policy, and they just assembled. They didn't march in en masse; they just assembled. They assembled in front of the front doors of the chamber. There must have been about 200 of them.

At that time, repairs to that level had not been done. There had been a fire here, as you know, a good while back, so part of the beams were not very structurally sound. We had found this out as a part of a study that we had done looking into the building, so this had been identified as something to do.

All of a sudden we found ourselves with about 200 people outside the front door yelling and screaming. Secu-

rity-wise, all that was defending the chamber was a very thin cordon of security officers and OPP officers. What do you do? Somebody is going to pull a gun and say, "Don't step forward; I'm going to shoot." That's not an answer, either. What defused the bomb then was that a very senior member of the House left the House, went to talk to these people and was successful in dispersing them.

Demonstrations inside the building are forbidden. As I said, the Speaker will now be in a position, as he wasn't before — the Speaker could direct before all he or she wanted. I think I will restrain myself here, because I went into this very, very deeply when I appeared before this committee in camera a year back, as this committee was preparing its report. I don't think I want to go any further. The Speaker very shortly will have put into place a plan for access of this building which will address all of those points.

Mr Baird: I could look, though, for this narrow point because it's not an issue so much of security but where one particular individual or group of individuals would seek to deliberately break the rules of the chamber and then conveniently have preprinted and photocopied press releases and would sit for quite some period of time in the hallways after they've caused a disturbance and the Speaker has ordered them removed from the chamber. They would then want to take advantage of the opportunity to undertake a communications strategy on the premises, in fact right outside the chamber that they've just been kicked out of. I just wanted to clarify if we would be able to see that —

Mr DesRosiers: The Speaker will be in a position to rule on that.

Mr Baird: And you would expect that would be a necessary part of a security strategy.

Mr DesRosiers: Absolutely. Access and use of this building, absolutely, is part of this strategy.

1710

Mr McLean: Can I have a supplementary on that? If individuals get kicked out three times in a row, is there going to be a provision in what the Speaker can order to be done? Is there going to be a charge? Can they be charged? Can they be fined? Is that going to be something that's probably going to be within — give him the authority to do, or the head of security is the one who should have the authority.

Mr DesRosiers: Security will have that authority, if a law has been broken. This is a Parliament and so there's a judgement to be made, but the Speaker is there to be consulted on these things and he will be.

Mr Tilson: I'd like to comment a bit about how you foresee the improvement of security to committees can be made, both here in this building and also when we travel.

I haven't personally experienced too many difficulties. I think the first occasion actually was with Mr Curling. There was an incident when sitting on a committee. A former government was implementing employment equity and there were some pretty extreme groups out there that were kind of scary. The minister's life was threatened. There were some very extreme groups that were against

non-white people, they were against women, the groups that were referred to in employment equity. In fact, I must say at one point I didn't feel too secure. I was sitting beside Mrs Witmer on one side and Mr Curling on the other side.

Mr Curling: You had two minorities there.

Mr Tilson: It's improper of me to make light of it because it was a scary thing for all members of the committee. Mr Curling may remember, someone came into the committee and told us about security, which was essentially "Hit the floor," if some wacko comes into the committee room.

I haven't heard of too much lately, in the last couple of years, but there can be and will be incidents here. Of course, in this building there is more opportunity for security because you have the security here, but when we go out I guess all the Chairs can do is order police to come. But I must say, in that one incident, about which Mr Curling may or may not feel the same way I did, as a member of this place, I didn't feel that secure.

Mr DesRosiers: Mr Tilson, you're impressing upon me something that I believe firmly in. This place needs more security and it needs to be addressed more directly.

What I will suggest to the Clerk of Committees, because I understand the Chairs of committees meet regularly and so on, is that at the next meeting — and maybe that meeting can be sooner rather than later — the Sergeant at Arms be invited so you can specifically discuss security among yourselves and come to some understanding.

You're right, in this building, as things stand now, there isn't a lot of security. So if somebody shows up and walks in through here, as happened to you — it was a very unpleasant surprise to you, I'm sure, and I think you did the right thing. You recessed the committee and the person was taken care of, I trust, and so on. I think committee Chairs should discuss this with the sergeant to make sure that there is a plan, that the committee rooms here are looked after security-wise and that we can be of as much help as we can.

On the road, of course, our security forces here have no authority. We have no provisions to, for example, say to the sergeant: "Committee X is going to North Bay next week. Could you send two officers with them?" That's just not done. First of all, we couldn't move into an area like that which is already under the jurisdiction of the North Bay police. It doesn't work that way.

The sergeant probably has some good ideas about how to communicate with local police forces and so on. I'll probably get a ribbing from Deborah Deller when I get back and she has listened to me, because this is something I'm not completely up on, but I'm sure that he would have some good ideas on how to do this and probably the committee clerks have very good ideas already how to do this. Maybe these are things that should be planned and looked at more carefully.

But listen, I've been working around parliaments for 26 years and there are some scary moments. It's important that we put this out front, that we put this on the table, that

we don't try and hide it on a back burner someplace, because that's what has happened too much in the past. Let's look at it right up front, let's look it in the face and let's see what we have to do.

Mr Tilson: You see, my understanding is that when you're out on the road, the clerk of the committee retains a hotel or a place and the security seems to be the hotel.

Mr DesRosiers: That's right.

Mr Tilson: If there's advance warning of a demonstration that's coming, I suppose the Chair, in his or her discretion, could order police. I don't have suggestions other than my experience as a member — my little experience, because I haven't had a great deal of experience — and my even shorter experience as a Chair is that I believe there are potential problems. As I said in my initial comments to you, I hope we're not waiting for an incident, because I don't know what goes on in other jurisdictions when committees travel.

Mr DesRosiers: They do, more than they do here.

Mr McLean: They get a good trip.

Mr Tilson: When I say, in my view, there is little security here in this place, there is zero to protect members and the staff and others, members of the public, from people who could come in and conceivably do anything in a committee hearing. On very contentious issues people are very emotional about many of these issues one way or the other. My comment is repeated, that whoever is investigating the issue of security for committees — in the incident that I referred to with employment equity, I remember we had a uniformed officer outside the door and a plainclothes officer inside the door and that was our security. That seemed to make us feel a little better, I guess, but it's a problem that I see as a member — and I can't believe other members from all three sides aren't concerned with — when you're sitting on committees on very contentious issues.

Mr DesRosiers: I'm sure they are, and my suggestion is that it be looked at as quickly as possible. As to your wish that these things not be put on a back burner, let me assure you that they are not. It's my duty to ensure that the Speaker address this matter of security because it's for his protection, not only for your protection. My job is to look after the Speaker and the law says that he is responsible for security. It's my job to try and encourage him, and with this Speaker and with Speaker McLean, I didn't have to encourage them a lot, and all the Speakers I worked for, Speaker Warner and Speaker Edighoffer, who took the matter very seriously.

I think that Speaker Stockwell, because things happen that way, is now in a position where other Speakers might not have been, that he will be. Part of the reason he's in a position where he will be able to look after security in a much more serious way is that he has in hand the report of this committee, which had been asked for by Speaker McLean.

Mr Curling: I just want to quickly follow up on what Mr Tilson said. It's very important that not only upon the request of the committee to do that, but as part of the process that if a committee is going to travel, the security

here that you started to talk about, that when you think we require security, you go through that kind of a process. You're right. Not only after the committee, but there is the fear — many times we say, "Let's get out of town as fast as possible." Some of these committees are overnight. You decide to stay in your hotel and you don't know if you walk down the street what will happen.

This happened, of course, in employment equity, government housing; it happened in Bill 7, even in here. But I would rather hope that your report of the process would be that any committee that is going to travel goes through a process where they check security questionnaires and go through where you'll be staying, what type of issue, do you think this issue would have any sort of friction, do you suspect that, that kind of stuff.

I remember many times when I was in housing — I remember those days — I was rather fearful, as a minister, many times because it became so personal. It's "you people" and they face you differently. So I would like to see that. Mr Tilson raised a very important point because you feel really alone outside there afterwards.

1720

Mr DesRosiers: As I said, I will be directing the Clerk of Committees to put this on the agenda for the next committee Chairs' meeting, and an invitation to the Sergeant would be useful, I think, so that you can discuss this. You're the people with the experience here, you've lived through this and so on. You can talk this out and decide what should be done.

Mr Curling: There's urgency because Mrs Witmer now and Mr Snobelen are really dealing with very controversial bills, I don't know when a wacko will decide that he'll take it beyond that and why we interpret our interaction as something different and then take it outside. If you could be as urgent as possible.

Mr DesRosiers: It will.

Mr McLean: It would be a good idea for this committee — there are a lot of new members on it — to have a tour of this building some day.

The Chair: Yes, I was just going to suggest that. If the committee's interested in that, maybe we should.

Mr McLean: The question I'm going to ask would pertain to that, because I had some Liberal members the other day wanting to know about the stairway. There's some work being done.

Mr DesRosiers: Yes, there is.

Mr McLean: Could you bring us up to date on it?

Mr DesRosiers: The project that is being undertaken right now is what's referred to as the life and fire renovation. Work is progressing right now on a new exit stairwell from the chamber. That stairwell will lead right into a part of my office, not in my immediate office but in a room not far from my office. It will provide exit from the chamber. That's what's going on right now. Money has been provided by the Board of Internal Economy and that's what's ongoing.

The board, as I said, will be looking at other projects and it has other projects on the 1997-98 estimates which it

will have to make recommendations on when it meets next to look at estimates.

Mr McLean: Is it going down to the first floor?

Mr DesRosiers: It's going down to my office.

Mr McLean: And outside?

Mr DesRosiers: No, it's coming back to me now. This will go straight down to the basement. It will go through my office, not to my office, straight to the basement and then the recommendation is that it go outside, beside the front steps, on the right-hand side, on the west side of the front steps. The master plan calls for that to be a main entrance as well.

If you'll remember, Speaker McLean, the part of the master plan calls for a public entrance below the front steps with a ramp going through there. A ramp for handicapped people used to be coming right in front of my office but it was constructed in wood and it was a very steep ramp, it wasn't a practical ramp. Even experts who were very able people with wheelchairs couldn't negotiate it. It was a zigzag, it was an obstacle course. It was terrible.

Then a study was made to see if a straight ramp couldn't be made up to the front door and that straight ramp would have to start from the end of the Queen's Park Circle. It's too much of an incline. Anyway, the plan calls for the ramp to go down, on the west side of the main entrance, to the basement and would link up with the fire escape as well.

Mr McLean: Is it going up to the fifth floor? There was some talk it was going to the fifth floor.

Mr DesRosiers: You've got me there.

Mr McLean: It's Barbara who still deals with it?

Mr DesRosiers: Yes, it would be Barbara Speakman.

Mr McLean: I think some of the members should, especially on the third and fourth floors, get an update on it.

Mr DesRosiers: That's a suggestion I made to the Chair before. I encourage members to familiarize yourselves with this building and with parts of the building — I know Mr Baird went on a tour. He can encourage this. He went on a tour a couple of weeks ago. I fully encourage the whole committee to do it because it's very helpful to get a general idea of the building and what its innate problems are.

The Chair: I would take it that the committee would like a tour. We'll arrange one as part of the agenda.

Are there any other questions for the Clerk?

Mr McLean: Maybe after we have the tour.

The Chair: A semiannual review. On that note, I'd like to thank the Clerk for coming and being very candid with us and responding to the questions.

Mr DesRosiers: Mr Chair, just one last word, if you will. We shouldn't let an interval of four years go by before I come back on another semiannual visit. But I'd like to take this occasion to — you ask me the questions, but I wouldn't be able to do a darn thing around here if it wasn't for the very excellent staff that work here. These are dedicated people. You know them. These are people who work with you, who work long hours, who work for no extra remuneration and who are dedicated to the very nature of this institution and to the people who work in it. I want to thank them on your behalf and thank them on my behalf, because they make my job possible. Thank you for having me here. It's a pleasure.

The Chair: Thank you.

Mr Baird: I wanted to just check on an issue unrelated to the Clerk's visit. There were two issues raised by me at the last meeting of the committee in June on information requests and I wanted to follow that up and see if they were available.

Clerk of the Committee (Mr Peter Sibenik): You're referring to the matter of the access to the Legislative Building?

Mr Baird: Yes, that was the first one.

Clerk of the Committee: We're still looking into that one. I'll have the information available next week. Do you want to hear from anyone?

Mr Baird: I'd just be happy to get a report in writing. That would be fine.

Clerk of the Committee: And the second issue?

Mr Baird: The second issue was that the committee made a decision not to send representatives to the National Conference of State Legislatures and I just wanted to find out if anyone from the Legislative Assembly of Ontario had attended.

Clerk of the Committee: Not that I'm aware of. There could have been an individual decision made by an individual member.

Mr Baird: I know there were no members of the committee going, but were there any staff from the Legislative Assembly of Ontario who went?

Clerk of the Committee: Not that I'm aware of. I will check into that.

Mr Baird: That would be super.

The Chair: I think it's in your desk area, John, that there were some cassettes of the National Conference of State Legislatures that could be ordered. I've given those to every one of the members, and if they wish to order something from there, they can do so and let the clerk know. That was arising out of that meeting.

If there's no other business, we'll adjourn.

The committee adjourned at 1728.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 10 September 1997
Wednesday 17 September 1997

Standing committee on the Legislative Assembly

United Empire Loyalists'
Day Act, 1997

Journal des débats (Hansard)

Mercredi 10 septembre 1997
Mercredi 17 septembre 1997

Comité permanent de l'Assemblée législative

Loi de 1997 sur le jour
des Loyalistes de l'Empire-Uni



Chair: Joseph N. Tascona
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 10 September 1997

Mercredi 10 septembre 1997

The committee met at 1540 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Joseph N. Tascona): We're going to commence the committee. We had a subcommittee meeting a few minutes ago and I just want to report on that.

Your subcommittee met on September 10, 1997, to discuss the future business of the committee and it has agreed to recommend as follows:

(1) Bill 150 will be scheduled for September 17, 1997. We'll advertise on the parliamentary channel, and Mr Danford is to be notified by the committee clerk.

(2) We're going to tour the Legislative Building today.

(3) MPP Hastings will be invited to appear before the next meeting of the committee on September 17, 1997, to deal with his matter, which is new technology.

(4) A letter is going to be sent to Mr O'Toole that the order and decorum matter has been removed from the committee's agenda.

Is there a motion to accept this report?

Mr Tony Clement (Brampton South): I'll move it.

The Chair: All those in favour? Carried.

The next order of duty is a tour of the Legislative Building. We have Barbara Speakman, the executive director of Legislative Assembly services, with us today. I welcome you to the committee. If you would like to make a few remarks, then we can commence the tour.

Ms Barbara Speakman: I'm not sure exactly what you want to see, but I thought if we started on what is

currently the fifth floor, which is unfinished, up in the attic, I can show you some of the work that has already been done there. I can also describe to you some of the work that was done on the roof and the structural members up there during the renovation of the building and explain some of the difficulties we had prior to the renovation.

I can then show you just what is before the Board of Internal Economy at the moment with respect to future renovation to the building. I thought that might help. I don't know what other parts of the building you would like to see, but perhaps you can tell me that as you go along.

The Chair: Any of the other members?

Mr Allan K. McLean (Simcoe East): I suggested that we have a look at the basement in the north wing. There have been some modifications taking place there and some members don't know what's down there, so I thought we could have a tour of that. I know there are some showers there and some facilities that members are not aware of. If each caucus saw that — it won't take long to look at it.

The Chair: Any other areas?

Mr Clement: The member is assuming that we don't know there are showers there. Obviously we've got to do a better job with personal hygiene.

The Chair: Okay. We're going to go out on the tour. We're going to lock the doors, so if you've got anything you want to take with you, I'd suggest you take it with you.

The committee adjourned at 1543.

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Wednesday 10 September 1997

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président

Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)

Vice-Chair / Vice-Président

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Mr Tony Silipo (Dovercourt ND)

Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)

Mr David Tilson (Dufferin-Peel PC)

Mr Bud Wildman (Algoma ND)

Also taking part / Autres participants et participantes

Ms Barbara Speakman, executive director, Legislative Assembly services

Clerk / Greffier

Mr Peter Sibenik

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

Wednesday 17 September 1997

Mercredi 17 septembre 1997

The committee met at 1543 in room 228.

UNITED EMPIRE LOYALISTS' DAY
ACT, 1997

LOI DE 1997 SUR LE JOUR
DES LOYALISTES DE L'EMPIRE-UNI

Consideration of Bill 150, An Act proclaiming United Empire Loyalists' Day / Projet de loi 150, Loi proclamant le jour des Loyalistes de l'Empire-Uni.

The Chair (Mr Joseph N. Tascona): The matter on the agenda today is Bill 150. We'll start off the meeting with a statement by Harry Danford, MPP.

Mr Harry Danford (Hastings-Peterborough): Thank you, Mr Chairman, and members of the committee. I'm sure there'll be a few others joining us before we're finished. I appreciate the opportunity to be here and to have an opportunity to make a presentation regarding An Act proclaiming United Empire Loyalists' Day.

Let me start by saying that I believe our heritage is something we should be celebrating. If passed, Bill 150 would give us a chance to recognize the important part that one particular group, the Loyalists, played, and their descendants continue in play, in the development of Ontario. I believe the Loyalists' influence has contributed so much to the province of Ontario; that it is a heritage that belongs to all Ontarians and not just to those with Loyalist roots.

I was disappointed, I might say, to see in last week's papers the poll that found very few of our students know the basics of Canadian history. I believe this is a sign that we need to focus more on our history because it is a history we can be proud of. I believe this bill will help us focus attention on this one important aspect of Ontario's history.

As I have said before, it was Loyalist heritage that led to the development of Canada, with its bilingual, multi-cultural and regional traditions, under the unifying context of a constitutional monarchy and parliamentary democracy. This is the very thing that sets Canada apart from other nations. This is something we should be proud of and celebrate, and Bill 150 does that.

The Loyalists were Canada's first multicultural immigration. As a result of this massive immigration, pressures were brought forward by the Loyalists for new freedoms that were not found in either Britain or the United States. For example, the Legislature of Upper Canada passed an act in 1793 that effectively ended slavery. This was 50 years before Britain and 70 years before the United States.

Members may be wondering why we should mark UEL Day on June 19. June 19 marks the anniversary of royal assent to the Constitutional Act of 1791. This is probably

the most important legacy the Loyalists have left for us. The Constitutional Act set out the framework for representative government in Upper Canada, which is the predecessor of modern-day Ontario. As a matter of fact, our roles as members of provincial Parliament can be traced back to the Constitutional Act of 1791, and indeed the first provincial Parliament held at Newark, which we refer to now as Niagara-on-the-Lake, in 1792. It was the Constitutional Act that established our court system and system of land tenure that is still in use today.

So much of what we take for granted here in Canada has happened as a result of that Constitutional Act. It was this act that guaranteed the protection of the crown for the French language and culture in Lower Canada. It was also the Constitutional Act that gave Catholics full participation rights in Canada, despite the fact that they did not have them in Britain at that time.

The Constitutional Act was passed as a result of the Loyalist migration to Upper Canada, as the new immigrants began demanding changes to the way the colony had been governed in the past. June 19 is the appropriate day because it recognizes one of the lasting contributions of the Loyalists.

I'd like to say that this bill could not have happened without the assistance of a number of organizations. Consultations were held with the United Empire Loyalists' Association of Canada, the Monarchist League of Canada and the Ontario Black History Society, prior to and indeed after the introduction of Bill 150. Out of those consultations I realized the need to amend the preamble of the bill to recognize all African American Loyalists and not just those that were slaves. During clause-by-clause consideration, I will be moving such an amendment.

The Loyalist influence is seen all around us today. As a result of this, I believe the Loyalist tradition belongs to all Ontarians, whether their ancestors were Loyalists or not. The Loyalists worked on behalf of all subjects of the crown and citizens of Canada and not simply for those belonging to a Loyalist club.

I would like to ask all members to recognize the historic importance of the Loyalists by supporting this bill. The Loyalists have left an indelible mark on Ontario. By recognizing June 19 as United Empire Loyalists' Day, we will be celebrating the Loyalists' contribution, and their descendants' continued contribution, not just to Ontario but indeed to Canada.

The Chair: Thank you, Mr Danford. Are there any questions or comments for Mr Danford?

Mr Ernie Hardeman (Oxford): I have a question, I suppose, on the definition of a Loyalist, as the bill lists the different nationalities and different people that made up the United Empire Loyalists. Was there a time in history where you became something other than a United Empire

Loyalist. Someone who supports the United Empire today, are they not a United Empire Loyalist? Is in fact the designation of a day for people in history or people of today?

Mr Danford: Certainly the history that was established at that time in the late 1700s continues on today, and I think in all fairness almost all of us go back and have some connection with those families, those descendants of those families, who relate us to the same movement. I think we're all part of it. The fact that we're here in Ontario and how Ontario was formed, through that movement, and through again, as I've mentioned, the Constitutional Act, make us all part of it. So it's as important in my opinion for the people of today as it was for those people who originated it over 200 years ago.

1550

Mr Hardeman: Just to make sure I understand it, I happen to be one of the nationalities on your list. Because I was born some 200 years later than the people you're referring to in the bill, and I'm a strong supporter of the United Empire, am I a United Empire Loyalist? Was there some point in history where that title was lost, that only those people who were there that day would be considered United Empire Loyalists?

Mr Danford: The descendants of those original families of that era and that time frame were granted the right to include "UE" after their names, and if you in fact, Mr Hardeman, are a descendant of that family, then as I understand it — I could be corrected — you would have that same right, if you requested it, to have "UE" placed behind your name.

Mr Alvin Curling (Scarborough North): I just want to follow up on the same question, because I had a thought too. At that said time, when they had the Empire Loyalists, all those who were living in Canada or in Ontario at the time were considered Empire Loyalists?

Mr Danford: No, not all those who were living at that time in Upper Canada as we knew it, in Upper and Lower Canada.

Mr Curling: So there were people who were not Loyalists really, and they were not members of the club, the group, so to speak.

Mr Allan K. McLean (Simcoe East): The natives.

Mr Danford: I hear a comment about the natives, but the natives were also considered United Empire Loyalists who came from the colonies and emigrated to Ontario, as we know it now. They were also included, United Empire Loyalists, in all fairness. It included all of those people.

Mr Curling: I saw the Iroquois here. They were the only natives who were considered as Empire Loyalists then.

Mr Danford: They were the most predominant native band that worked with the Loyalist movement and, as you know, they located near Brantford eventually. But others also are included as United Empire Loyalists. But if you go back in the histories, they were the predominant native band that was supportive and involved in that movement. There were also Mohawks, as I could mention from my area of Quinte and Adolphustown and in that area of the province, who were included in that. They joined the

Loyalist movement and landed on the shores of Adolphustown. If you look in the history, the most predominant native group was the Iroquois.

Mr Curling: So there would be others then. I don't want to place too much emphasis on it. There were other natives who were Empire Loyalists but not listed here.

Mr Danford: That's right.

Mr Curling: So the recognition is based on the contribution of the Empire Loyalists to the building of Canada.

Mr Danford: Right.

Mr Tony Silipo (Dovercourt): I just have a question with respect to the import that passing this bill and having June 19 proclaimed as United Empire Loyalists has. Obviously the bill doesn't suggest that this be, for example, a legal holiday. It's a day of proclamation.

I just wondered if Mr Danford could tell us what other days we have, if any, that might fall into this kind of category, that is, where the province or the Legislative Assembly has deemed that particular events or groups or people or things should be categorized in this way. It may be unfair to ask Mr Danford this, but if you think you know, we'd love to hear, or any information we have from legislative research on this. I'd just be interested in knowing that.

Mr Danford: If I could just have a second here to check the dates so the information could be accurate.

The Chair: What specifically is your question, Mr Silipo?

Mr Silipo: If Mr Danford is aware of what other — I guess it would have to be through legislation — legislation has been passed, if any, in the past that would proclaim particular days during the year for either certain groups, as this suggests, or events or other important parts of our history.

Mr Danford: Oh, I see. I guess I misunderstood in the beginning. There were a number of other days that could have been used instead of June 19.

Mr Silipo: No, that's not —

Mr Danford: No, that's not what you're asking for, Mr Silipo. To my knowledge and through the research we did leading up to this, I cannot give you another date. I don't recall through the research that anything of that sort of thing came to light.

Mr Silipo: So we don't have —

Mr Danford: I don't know whether —

Mr Silipo: I just wondered — is it appropriate, Chair? I don't know if Mr Yeager could tell us — are there other days of the year that the Legislative Assembly has decided, either by resolution or by legislation, be proclaimed as whatever? Is this a first, I guess, is what I'm getting at. I appreciate I'm talking beyond the import of the bill, which I certainly support and will indicate, when we get to it later on, more fully why, but I'd just be interested in that as well.

Mr Lewis Yeager: I don't have that information with me, but I'll have one of my colleagues in the office check that and provide you with the information as quickly as possible.

Mr Hardeman: I like to be persistent if I don't understand, so that's what I'm going to do now. I'm following up on Mr Curling's comments. As we look at what a United Empire Loyalist was or is, it started off by the majority of people emigrated to Upper Canada in order to avoid the American way of life and to get involved in the Canadian way of life. At that point in time, the people who lived here who did not come here for that reason, were they not considered United Empire Loyalists? Is it a title of an action or a title of the people we're commemorating? Is it the fact that they came over from the other side of the border and became part of our way of life and culture that is the important part of what we're commemorating, or is it the fact that they got here and became Canadians, as we are today?

Mr Danford: I think it's probably, not complicated I guess you'd say, but there are probably a few explanations. Certainly, as you've indicated, the original United Empire Loyalists were those groups of American citizens at that time who were under British rule who chose not to conform to what the American style was trying to change. They would either not take arms in some cases — some individuals chose to do that — or they did not agree with the principles that were trying to be imposed on them.

With that in mind, they migrated to Ontario. They were almost 10,000 in number. It increased substantially within a few years. At that time, with the people who lived in basically, as know it now, Quebec, the area and the culture were changing and it was necessary at that point in time to divide, and that's how we ended up, of course, naturally with Upper Canada and Lower Canada. I'm sure you all realize that. But the people who were part of that movement and settled in what we call now Ontario are what are referred to as United Empire Loyalists.

They had some different arrangements as far as laws and that sort of thing are concerned, and the British government granted that to those people in Ontario, rather than some of the laws that were part of Quebec at that time, because there were some differences. But it was the group that migrated under the revolution and settled in what we call now Ontario that were granted the UE status.

I might say, if it's not clear, we have another lady who will be presenting. She is totally familiar with this organization and she may be able to answer questions later if it's not in complete detail. We've done the research, but she has come with a wider range of research, representing that organization. So there may be some more questions that could be more fully addressed from our next presenter, as a matter of fact.

1600

Mr Hardeman: I would say, Mr Danford, that I do support the bill and will be supporting it when it comes time to vote. I just have some concern that we are not bestowing, shall we say, the honour of the day on people who came here because of what we had and take away the honour from those people who were already here for that same reason: that they wanted to be part of this way of life as opposed to the American style. They made the choice

earlier to come to Canada, as opposed to later. I just want to make sure we're not limiting one over the other.

Mr Danford: There's certainly no intent there. There has not been in over the 200 years, and there certainly is no more intent today; I can assure you of that.

Mr Curling: I think you captured what the Empire Loyalists, all the groups, were about. I think somehow, when you start listing the names, you're going to get into trouble, in the sense of Dutch, English, what have you, that you may leave some people out. I just wondered, for a friendly amendment, if you just leave out, "The main groups that comprised the Loyalists were the following..." Once you start naming, you know when we start saying, "I want to thank all those who contributed," the one you left out is the one who will be more annoyed than anybody else.

I think the United Empire Loyalists' contributions were quite significant in what they did in the direction they wished to be ruled, under royalty. But somehow putting the names in, you may leave some out, and some would say: "This law itself somehow recognizes Empire Loyalists and I was a part of it. I was from Australia or what have you and I was contributing. Why were we not mentioned?" I think that's where the problem comes in.

I also knew that even when you tried to describe, which you quite willingly changed, the freed African American slaves, immediately someone jumped up and said: "You left out some. What about the others?" Then your amendment, which came afterwards, said, "African Americans." I wonder if you could consider that. Instead of naming people, the groups in here, you would leave the names out and just say all those who contributed would be Empire Loyalists, because you've defined it very well there.

Mr Danford: I think most of us sitting around these tables understand when you put legislation together, or bylaws or anything of that nature, it is all but impossible to guarantee 100% accuracy. You'll notice we've taken our research from the best available records and we have listed it as the main groups. That is not to say that anyone is excluded, but we have simply noted the main groups as we could find that evidence from research. But certainly it is not intended to exclude anyone. If we try to be so precise as you suggest, we could in fact, regardless of how we tried, still eliminate something. Sometimes when you try to be so, and I probably shouldn't use the term, black and white, it is difficult to be so precise, and therefore we felt it was a fair way to simply state it as the main groups, as history shows us. That's why we have included those different variations.

Mr Curling: If you say "main," one would say, define "main". Does "main" mean numbers or contribution? Maybe there are 10 people whose contribution was greater than 200 people or any number. So when you say you just include the main groups, I could then ask you, what do you mean by "main" groups? Is it numbers?

Mr Danford: The main groups as are recorded in the records at that time.

Mr Curling: I just feel you're walking into something where people will question the fact that their contributions

were not recognized because they weren't part of the main group. What that means, I really don't know. I presume that if stand up to be counted and there are enough people to be counted, then you become a part of the main group. I'm sure there are others — I can declare my ignorance very much of the history of the United Empire Loyalists — who have made contributions. They're not in the main groups, but they did make contributions. You were saying that too.

Mr Danford: Everyone certainly contributed. That doesn't take away from the statement of saying that the main groups involved certain groups of people. That doesn't mean someone else didn't contribute, I don't think, in all fairness. It was never intended to do that.

Mr Curling: I just raised the point.

Mr Gary Fox (Prince Edward-Lennox-South Hastings): I come from an area that's supposed to be United Empire Loyalist territory. I've always been led to believe that the people who claim to be United Empire Loyalists were British subjects who fled from the US and came to an area of Ontario along the northeasterly shore of Lake Ontario, and their protectorate at that time was Fort Henry. Is that not true?

Mr Danford: There were different migrations. While many of them settled in Adolphustown — Quinte is in Loyalist country as we know it; certainly in our area, Mr Fox, as you and I share the same area — there also were significant movements to Niagara and another large movement around the Windsor-Sarnia area. There were three major areas. That's not to say we didn't cover Ontario as it spread out, but those were the three main points, as history shows us. Of course we have to rely on history and the records that are before us.

Mr Fox: I never knew that Niagara and Windsor were classified as United Empire Loyalist country.

Mr Danford: I'm relying on history and research — that's what we based it on — and from the United Empire Loyalist group that has been in place for so many years. I'm trusting their background and the information they provided for us in putting this together.

Mr McLean: I'd like to hear from the 4 pm witness we have to see what input she has into this before I ask any questions.

The Chair: You're right on schedule.

UNITED EMPIRE LOYALISTS' ASSOCIATION OF CANADA

The Chair: We have with us Bernice Woodflett, the national president of the United Empire Loyalists' Association of Canada. Thank you for attending today, Ms Woodflett. It's a fairly informal process. The members may want to ask you a question or just to comment afterwards.

Ms Bernice Woodflett: I hope they will ask me some questions. The topic I've chosen perhaps will fill in a few of the cracks that appeared here, but the others I'll try if we have time.

I am grateful for the opportunity to speak to you today in support of Bill 150. Ontario, as we know it today, owes its creation to the United Empire Loyalists, although the name "Ontario" did not come into use until 1867.

The actual story of the United Empire Loyalists was eloquently recited by various members during the second reading of the bill, and I will not repeat that today, but I would like to add one fact to the accounts already heard. Loyalists believed in political development through evolution rather than revolution. They achieved their purpose, albeit more slowly, as we know.

In the words of Arthur Gelber during the 1984 Ontario Bicentennial: "The Loyalists' approach to democracy and politics in those early days was the foundation not only of our own parliamentary democracy, but a model which was a significant inspiration to the development of the Commonwealth. That heritage of change through evolution is one which remains with us strongly to this day."

I believe the recognition of the Loyalists and their contribution to this province has been evolving over many years. In the words of Mary Beacock Fryer, "One pervading theme threads through Ontario's story — loyalty — from the founders of Ontario to the motto," which she translates as, "Loyal she began, loyal she remains."

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We have been reminded of this history at quite regular intervals in Ontario's time. For example, in 1816, after the War of 1812-14, the executive council of Upper Canada, as Ontario was called then, decreed that no land petitions would be received until proof of loyalty was provided. Sons had to have done their duty in defence of the province, and daughters had to prove that their husbands had also done their duty. Only when this proof was presented was land granted.

Intermarriage with new settlers somewhat diluted the Loyalist influence after the War of 1812, but in 1855 the Toronto Globe printed an editorial on the ignorance in Canada West — a new name — concerning the Loyalist fathers.

This may have resulted in Egerton Ryerson, who was our first Minister of Education, being approached about writing a history of the Loyalists, and eventually he did this. His two-volume history of the Loyalists is still in use today and is still read regularly by historians.

In 1859, the publishing of William Kirby's 178-page poem, *A Tale of Upper Canada*, served to remind us of our beginnings. The section on the Hungry Years is perhaps the best-known part, and it is one of the most poignant passages in Canadian literature.

At the same time, the Niagara area was the centre of Loyalist interest. William Hamilton Merritt was known for his Welland Canal, and in 1859 circulated a petition asking that the Ontario Legislature pay more attention to the history of Upper Canada. Other petitions soon followed and researchers were appointed to uncover Upper Canadian documentary material in Britain. Through such efforts a Loyalist tradition was created in the mid-19th century, many traces of which still remain today.

The reminders continued. In 1861 a provincial historical society was founded and it was called the Upper Canada Historical Society, because there was a growing interest in the history of the province. The year 1884 brought the centennial celebration of the Loyalist landing at Adolphustown. There were huge celebrations in Toronto and Niagara, as well as the Bay of Quinte area. Loyalist history was in the limelight again.

On February 28, 1896, the United Empire Loyalists' Association of Ontario was organized with the purpose of preserving such Loyalist records as were still available. Our work in this area continues today, especially now that archival space has become too scarce to keep all the valuable data which have been accumulated.

In 1904 an Ontario Archives report made available a large collection of important documentary material relating to Loyalist claims. This report is still one of our major references.

But in 1909 we have the biggest step in the evolutionary process thus far: the creation of the Ontario coat of arms, with its motto, "Ut incepit fidelis sic permanet": As she began, so she remains, loyal. This bore official witness for the first time to the Loyalist origins of the province.

The building of the St Lawrence Seaway brought attention again to our Loyalist story in the 1950s. The entire area which was to be flooded as part of the Seaway system was Loyalist ground. Some of the oldest and most valued historic buildings of the area were to be flooded. Whole villages were lost. Ontario's citizens must be forever grateful to Premier Leslie Frost and his government for having the wisdom and the sense of history to create Upper Canada Village, a living museum of the Loyalists and of early Ontario.

Today we can see some of these buildings which were saved, as well as the wonderful artefacts, the documents, the library, which make up the best collection of our early history anywhere. It is our fervent hope that proposed commercialization will be sufficiently controlled so that the historic integrity of the site is preserved.

We now move ahead to 1965 when on February 15 the new Canadian flag, the red maple leaf, was unfurled for the first time. Just three months later, on May 21, the Ontario provincial flag was proclaimed, the former Red Ensign with the provincial arms in the fly. I wonder if anyone realized at that time that the Loyalist flag is part of our provincial flag. The Union Jack is really the old Union Flag with the cross of St Patrick added. Whether it was intentional or not, the Loyalist flag is enshrined in the flag of Ontario, forever recognizing the Loyalist beginnings of our province.

Who of us will ever forget the excitement of the 1984 bicentennial celebration? Loyalist history again was at the forefront, and again people were reminded of how our province began. But 1984 was more than just celebration. Newly arrived citizens began to realize that they too followed the traditions laid down by our Loyalist forefathers.

A taxi driver in London, Ontario, who told me he had come from Ethiopia, recognized the badge on my blazer and asked if I knew about United Empire Loyalists. He went on to say he had studied English with a Canadian teacher in his native village. This teacher had told his class stories about the UELs and Ontario's beginnings. Eventually, when he knew he would have to leave his homeland, he remembered these stories and decided to try to get to Ontario to start a new life. A place which had been built by political refugees would understand his plight. As a matter of fact, he lives in my building, which I didn't know.

The Loyalists arrived with a special desire for justice and for peace, for respect and tolerance for people and cultures. Thus, at our very beginnings, the stage was set for the kind of multiracial, multicultural and multifaceted society we have in Ontario today. In a real sense we are all heirs to the Loyalist heritage.

"Our history belongs to all of us," said Sydney Wise of Carleton University. "We owe it to our children and grandchildren to pass on to them an understanding of our heritage and the strengths given us."

Bill 150 will give us the opportunity to do it. It is the culmination of all these and other efforts to give our Loyalist ancestors their due. It has taken 213 years for the evolutionary process to be completed, but with the passing of Bill 150, we will have achieved, in the tradition of the United Empire Loyalists, evolution without revolution.

The Chair: Thanks very much. Are there any questions or comments?

Mr David Tilson (Dufferin-Peel): My question has to do with the list of names that is suggested in the bill, whether or not that list is complete.

Ms Woodflett: Do you mean names of people or names of groups?

Mr Tilson: The bill refers to "the Dutch, the English, the freed African American slaves, the French, the Germans, the Iroquois, the Scots."

Ms Woodflett: You can add to that the Swiss, the Jews and about 18 more as well.

Mr Tilson: That's my point.

Ms Woodflett: The way I would answer that is that those are the larger groups. The largest group who came were German ancestors, and they perhaps spoke German rather than English when they came here. There were smaller groups. There was a group of Jewish immigrants who came and settled around the Gananoque area, for example. There weren't very many of them, but they certainly were there.

Mr Tilson: I guess my question really is that we, as representatives of constituents around the province — are there going to be some people in this province who may not be part of that group but may consider themselves, their ancestors at least, were loyal to the empire and will be a little annoyed that this list is as short as it is? I'm not necessarily saying the list should be extended. I'm raising the question, should that list even be there?

Ms Woodflett: You're suggesting it be written in more general terms?

Mr Tilson: Or even don't refer to nationalities. I don't know. You wouldn't believe the calls we get.

Ms Woodflett: Oh, I think I do. I get quite a few.

The Chair: We'll have someone calling up and saying, "I'm Italian, I'm Irish, I'm from some other nationality and my ancestors I believe were loyal to the empire," and away we go, we're in big trouble.

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Ms Woodflett: For what it's worth, we have four applications on our desk right now which have very Italian-sounding names. That's what they were. And there has been intermarriage back over the time, so I understand what you're getting at. I'm not sure what the answer is to that. I really am not.

If you take the groups that came to Canada at that particular time, then the ones that have been named were the largest groups. But certainly there should be something to indicate that they were not the only groups. How you're going to do that, I'm not sure.

Mr Tilson: Thank you very much.

Mr Curling: I just want to emphasize that the presentation was excellent, it gives you some historic background and I enjoyed that very much, but I still have those concerns too, as you know, that have been raised by Mr Tilson here.

Ms Woodflett: May I reply? You see, there were many of the people who left the United States who did not come to Canada. Many of them went to the Caribbean. Many of them went to Sierra Leone. Others went back to England. Some of them hid in Florida and areas like that. There are many people that did not come to Canada. They estimate that there was a third who left the country, a third who stayed who were rebels, and a third who were completely neutral and kind of disappeared for a few years until it was safe to come back. That is another story.

Mr Curling: What I'll do is just give notice that I'll make an amendment that may resolve some of the concern I have, that may solve the problem, I feel, that this is a reason.

Ms Woodflett: I think you speak to Mr Danford about that.

Mr Hardeman: First of all, on the issue of listing the different nationalities, I would really question whether that was important to designating a day to recognize a group that has attained a new title, which is United Empire Loyalists. What they were prior to that I'm not sure would be critical to the bill, to declare that a holiday. I would leave that to the presenter of the bill that he may want to consider that in an amendment.

I think you've somewhat clarified it for me; I just wanted to make sure I understand it. A United Empire Loyalist is an individual who came from the United States and came to Canada at the time of the independence of the United States. No one who was born after that time is a United Empire Loyalist.

Ms Woodflett: Oh, yes, I'll use my own life if I may as an example. My ancestors came from the Mohawk Valley and one group of them stayed loyal to the Americans. They were rebels. I have them on both sides. Then,

my own particular group, he was a Minuteman and he got caught by the British and was given the choice of make boots for the British army or get hanged. He chose to make boots.

Mr Hardeman: Smart choice.

Ms Woodflett: Obviously. Then his family was in great danger. So they had to leave and went to a refugee camp around Sorel. Eventually the war ended and families got back together and so on and so forth. But in 1789 Lord Dorchester issued this edict because he wanted to make sure that these people had been recognized. They had lost their homes, their professions, their families in many cases, because it really was a civil war in many ways. He wanted Great Britain to recognize them in some way.

They evolved this title which stands for unity of the empire, "the great principle of the unity of the empire." That was given as a hereditary title to all the sons and daughters of those original people. So because my ancestor fought in the King's Royal Regiment, New York, and eventually came and got his land grant, and I can prove my bloodlines right back to that person, therefore I can use that title as well. Does that answer your question?

Mr Hardeman: Absolutely.

Mr McLean: Can I add a supplementary to that? If you came from Britain, are you not classified as an Empire Loyalist?

Ms Woodflett: Not unless you actually lived in the United States before 1775. I'm sorry I didn't bring my bylaws with me and I could have read that word for word, but you had to have lived in the United States before 1775 and had declared your loyalty; that is, you had to join the British standard by that time, and then after that it happened as we've described.

The Chair: Thank you very much for your presentation.

At this point in time we've heard from Mr Danford and Ms Bernice Woodflett. Is there any further discussion at this point in time before we go to clause-by-clause?

Mr Tilson: I think it was Mr Silipo, but someone asked a question about similar days that we have in the province.

The Chair: Legislative research is putting that together right now. We haven't got an answer.

Mr Yeager: I think I have it sorted out. I don't know if this is complete, but the library has just brought me some initial information. There is a Tartan Day that was proclaimed in 1991, recognizing Scottish heritage. There's a Heritage Week in February that was proclaimed at least in 1993, and perhaps earlier. There's a Black History Month as well. Those are initial examples that they were able to get me on a few minutes' notice. So there are similar types of recognition in the past although they might not necessarily be specific days.

Mr Tilson: The reason I asked that question – I don't know if it was Mr Danford or you, sir – was we could have something for every day of the year. Maybe there's nothing wrong with that. I don't know if anyone has philosophized on that. I think it's important, this is such a multicultural society, that we recognize our historical past.

I'd just like to hear someone comment on that, whether that's good or bad. Maybe there isn't any feeling. Maybe it's not bad to have all kinds of days recognizing the many different contributions that different nationalities have made to this province, to this country.

The Chair: That's not for the legislative department to comment on.

Mr Tilson: I know that. I appreciate that.

The Chair: Mr Danford may want to comment.

Mr Danford: I think in all fairness the intent of this bill covers multiculturalism. I think it was the beginning of multiculturalism. We talk a lot about it these days, and human rights and all the things that are involved with it. But this actually did involve multiculturalism and it was the first movement towards that, that all the groups banded together to form this one movement. I think that's one of the significant parts of it. The fact that brought about, actually, the province of Ontario, we think is significant, and therefore it should be recognized for that reason. It's not to distinguish between. As a group they brought about the province, and that's why it's important we do recognize a designated day, for that reason.

Mr Curling: My feeling on that comment is that's stretching it a little bit, to feel that proclaiming United Empire Loyalist Day is a multicultural thing. I think people had a focus, yes, of an issue they dealt with, but I don't think it was dealt with in a multicultural way. I think they had a cause and they all identified with that cause. But to say it was one of the multicultural creation of things is a little bit stretching. It's wonderful that all people of different nationalities who were around at that time could have got together, and to be Loyalist, so to speak, but I wouldn't regard it as a multicultural day, as a creation of a multicultural time.

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Yes, I think that in recognition of the contributions that made this great country and this great province there should be days as such and we should do that to remember all this, what caused all this, why we have so wonderful a country. I think that should be done. But we must be careful as we make these days that we don't start climbing over each other and jostling for days and what have you.

I know there was a concern, and I spoke to Mr Danford about it, about emancipation day, that maybe that day should be called Emancipation Day, but now it's the day we call Simcoe Day, and how a proper debate could come about in recognizing those days because you'll find some significant things in history that are happening on the same day, and some other things that significantly happened before. Maybe one day a debate will come about, and I understand the day that is selected does not conflict with that emancipation day, so to speak.

But the question I was asking, and I think Mr Silipo asked it, was about the day itself of June 19, which would be proclaimed United Empire Loyalists' Day, if there are any other conflicting days or a celebration at that time. Legislative research stated that there are days of Black History Month, which declared before, and Scottish days were declared before and Tartan Day was declared. But

for June 19, I don't know if there's any other significant day that is celebrated at that time. I know Mr Danford may not be able to answer that; neither did legislative research answer that question.

The Chair: On that note, I'd just ask if there's any other comments, questions or amendments to any section of Bill 150 and, if so, to which section?

Shall section 1 carry? Mr Danford? We're talking about sections here, not preambles.

Mr Danford: Then it would be included in section 1. I did intend to raise an amendment. Could I have a moment?

The Chair: Okay.

Mr Silipo: I wonder if while Mr Danford is checking out the wording, perhaps I could just indicate — I'd be happy to do it under section 1; I'm just as happy under the preamble. I just want to indicate on the record my support for this bill.

I wasn't in the House when second reading took place, but I had a chance to look back at the Hansard, and quite honestly I'm sorry I wasn't there because it struck me as being one of those rare moments when not only was there a fair amount of unanimity, but there was such unanimity around a cluster of points and issues that go back to the heart of what I think makes this province and this country one of the best places in the world to live.

I share in one extent Mr Curling's concern about how far you can take the multiculturalism aspect of this, but on the other hand I do understand the point that I think Mr Danford has been making on this, which is that clearly within the makeup of the United Empire Loyalists of the time, there were people who had come to the United States and then here to Canada, to Ontario, from many different parts of the world and indeed from different races, including the native peoples. That's a point that should not be missed and so I appreciate the fact that was put in.

However we resolve the wording of this, I'll be interested in hearing what suggestions — I'm kind of six of one, half a dozen of the other on that in terms of whether you include the largest groups or whether you don't. I don't have a strong view on that.

But I do think it is important — it was partly why I was interested in the information. I appreciate research providing us that information in terms of the number of days or times of the year that the Legislative Assembly has made proclamations with respect to other events. I do think this is one that is important to have recognized by the assembly. I say that as somebody who fits perhaps in the category of the more recent arrivals to this country, having come here in 1970, and I say that therefore with a great deal of respect for those who have been here before.

That's not to say I necessarily agree with the views that groups such as the United Empire Loyalists might have on particular issues or not, but I don't think that's the issue here. The issue here is recognizing a part of our history and recognizing that there has been an incredible amount of evolution that also includes one of the first groups that then played a key role in developing and eventually establishing this country.

I just think that is something that is worthwhile. As somebody who has come relatively recently and from a community the majority of whom have come relatively recently but also a community that can trace its presence in Ontario and Canada back some 150 years at least, I think I can not only voice my own views, which obviously are the only ones I have the right to, but voice the sentiment of many who have come, like me, relatively recently to this province and to this country, about the need, while we continue to ask for respect and fairness and understanding vis-à-vis the more recent immigrant groups, to be prepared in ways like this to also recognize the respect we have for some of the original settlers of this province.

It's in that spirit that I certainly support this bill. It's something that I wonder why it wasn't done before, but it's a good thing it is here. I thank Mr Danford for bringing it forward. It will add something that will be useful as we try to describe, in the limitations that anybody ever can in legislation, the evolution — I appreciated very much the phrase Ms Woodflett used, not once but twice, of "evolution rather than revolution." As a bit of an aside, I ask my colleagues opposite to remember those words as they continue to use the terminology in terms of their own Common Sense Revolution. I too am one who believes in evolution rather than revolution.

But I do say seriously that I think this piece of legislation recognizes an important part of our history and, as such, it's important to have that done. It's important to understand that as part of the evolution of this province and this country, but it's equally important for that to be done with a view also to the future, for myself, for my son and indeed for all children to also understand that that history is a part of us as well.

That doesn't mean we necessarily subscribe to everything that was there. That doesn't mean that we agree with necessarily everything. I have particularly, for example, some different views than others might have with respect to what should happen with the evolution of the monarchy. As we've seen the empire change over the years, we've obviously begun to see in more recent times that the monarchy has to change, and perhaps we will see the day when the monarchy will no longer play a role in this country. It's something that I think is just going to be part of the continuing evolution of Canada as a country.

But that would not for one second deny and should not deny the recognition that part of our history as a province and as a country involves the very significant role the United Empire Loyalists played, and without whom this province and this country would obviously have taken a very different kind of configuration. I'm grateful for the contribution they have made and am happy to be in a position where I can raise my hand in support of a bill that seeks to recognize that history and to recognize that contribution.

Mr Danford: Is it in order to propose an amendment at this time?

The Chair: To what?

Mr Danford: To the first paragraph. I think you had asked the question earlier.

The Chair: Are you talking about the preamble or a section?

Mr Danford: I'm talking about the preamble.

The Chair: You have to wait till we get to it. We're dealing with the sections of the bill right now. There are three sections to the bill.

Mr Danford: Oh, yes. All right. Sorry.

The Chair: Mr Curling, do you want to deal with the sections?

Mr Curling: I just wanted to place on the record too that I strongly support this legislation. I want to commend Mr Danford for the way he presented it and the way he actually worked the caucus and worked me to bring me up to date on any changes he was envisioning and any concern the community had. I want to thank you for that.

I too want to echo the things Mr Silipo said as also a new immigrant of just 30 years or so, that what we are enjoying today, and I'm talking about immigrants like myself, and what my daughters and son are enjoying today, who are Canadian born, should never be taken for granted.

There were those who had a belief and a commitment that have allowed us today to enjoy this country, our country, in this manner. Knowing where we come from, as we always say, without precisely telling us exactly where we are going, makes it much easier for us. Too often we forget those things. Many times in the House there are debates that sometimes people think are rather unnecessary, but it's enlightening, it's encouraging and it's remindful of the things we should be looking at. Today I've learned a considerable amount and hope that the knowledge I gathered will stimulate me to learn more about that and to carry that kind of message out to those of us who are here in Canada and building our country.

I fully want to support this. I'd like to see all those recognized who have contributed to making this country what it is, and this is a wonderful time in which to do that. I hope that the amendments you bring forward may be helpful in making those kinds of recognition.

The Chair: Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Mr Danford, do you want to speak to the preamble?

Mr Danford: If it's in order, Mr Chairman, I would move an amendment at this point. I would ask that the third sentence be removed in its entirety. I can read the sentence if you think it's required.

The Chair: The third sentence?

Mr Danford: The third sentence and it would begin with, "The main groups that comprised the Loyalists were the following: the Dutch, the English, freed African American slaves, the French, the Germans, the Iroquois, the Scots," that that be completely deleted.

The Chair: Are you sure that's not the second sentence?

Mr Silipo: No, it's the third.

Mr Danford: I believe it's the third, unless I've missed —

The Chair: Oh, yes, you're right. Any comments on that amendment? Discussion? Shall the amendment to the preamble carry? Carried.

Shall the preamble, as amended, carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

That concludes our activities for the day. I'd like to thank everyone and especially Mr Danford for his efforts.

The committee adjourned at 1644.

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